

**WEST VIRGINIA  
SECRETARY OF STATE  
BETTY IRELAND  
ADMINISTRATIVE LAW DIVISION**

Form #3

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SECRETARY OF STATE  
STATE OF WEST VIRGINIA

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

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

CITE AUTHORITY: W. Va. Code §22-5-4

AMENDMENT TO AN EXISTING RULE: YES  NO

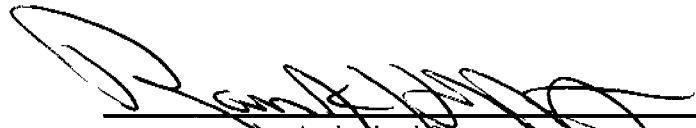
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 8

TITLE OF RULE BEING AMENDED: Ambient Air Quality Standards

IF NO, SERIES NUMBER OF 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.

  
Authorized Signature



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

August 29, 2008

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

John A. Benedict, Director  
601 57th Street, S.E.  
Charleston, WV 25304  
Phone: (304) 926-0499 ext. 1966

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Fax: (304) 926-0488

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John.A.Benedict@wv.gov

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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

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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

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b. Date of hearing or comment period:

N/A

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

N/A

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d. Attach findings and determinations and reasons:

Attached N/A

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

**BRIEFING DOCUMENT**

**Rule Title:** 45CSR8 - "Ambient Air Quality Standards"

**A. AUTHORITY:** W.Va. Code §22-5-4

**B. SUMMARY OF RULE:**

The purpose of this rule is to establish ambient air quality standards for sulfur oxides, particulate matter, carbon monoxide, ozone, nitrogen dioxide and lead, equivalent to those national primary and secondary National Ambient Air Quality Standards (NAAQS) established by the U.S. EPA.

National primary ambient air quality standards define levels of air quality which the Administrator of the U.S. EPA judges are necessary, with an adequate margin of safety, to protect the public health. National secondary ambient air quality standards define levels of air quality which the Administrator of the U.S. EPA judges necessary to protect the public welfare from any known or anticipated adverse effects of a pollutant. Such standards are subject to revision, and additional primary and secondary standards may be promulgated as the Administrator of the U.S. EPA deems necessary to protect the public health and welfare.

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

In accordance with Sections 108 and 109 of the Clean Air Act (CAA), EPA has promulgated air quality criteria and NAAQS for sulfur oxides, particulate matter, carbon monoxide, ozone, nitrogen dioxide and lead. 45CSR8 will meet the requirements for State Implementation Plans under Section 110 of the CAA through the NAAQS standards for sulfur oxides, particulate matter, carbon monoxide, ozone, nitrogen dioxide and lead set forth in this rule. Because U.S. EPA has revised the 8-hour primary and secondary ozone NAAQS, the DAQ has revised and updated 45CSR8 to reflect these revised standards. Revisions to the rule also include deletion of references to the obsolete one-hour ozone NAAQS. In accordance with Section 110(a)(2)(H) of the CAA, the DAQ will submit final rule 45CSR8 as a revision to the State Implementation Plan.

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

A federal counterpart to this proposed rule exists. Because proposed revisions make the rule conform to the federal counterpart rule, no determination of stringency is required.

**E. CONSTITUTIONAL TAKINGS DETERMINATION:**

In accordance with §22-1A-1 and 3(c,) the Secretary has determined that this rule will not result in taking of private property within the meaning of the Constitutions of West Virginia and the United States of America.

**F. CONSULTATION WITH THE ENVIRONMENTAL PROTECTION ADVISORY COUNCIL:**

At its June 24, 2008 meeting, the Environmental Protection Advisory Council reviewed and discussed this rule. (See attached minutes for Council's discussion).

West Virginia Department of Environmental Protection

**ADVISORY COUNCIL MEETING MINUTES**

Tuesday, June 24, 2008  
601 57<sup>th</sup> Street, SE, Charleston, WV  
West Virginia Room – 3<sup>rd</sup> Floor

**IN ATTENDANCE:**

***Members of the Council:***

Jackie Hallinan  
Karen Price  
Bill Raney  
Rick Roberts

***DEP:***

Randy Huffman	Cabinet Secretary
Lisa McClung	Deputy Cabinet Secretary and Director, Division of Water and Waste Management
Raymond Franks II	General Counsel
Karen Watson	Associate General Counsel
Kathy Cosco	Communications Director
Pam Nixon	Environmental Advocate
Ken Politan	Mining & Reclamation
Lewis Halstead	Mining & Reclamation
Charlie Sturey	Mining & Reclamation
Carroll Cather	Water & Waste Management
Don Martin	Land Restoration
Brian Long	Water & Waste Management
Dan Arnold	Water & Waste Management
Mike Zeto	Environmental Enforcement
Terrie Sangid	Water & Waste Management
Jim Mason	Air Quality
Mike Johnson	Water & Waste Management
Kathy Emery	Water & Waste Management
Scott Mandirola	Water & Waste Management

***Visitors:***

Tom Boggs	Chamber of Commerce
Don Garvin	WV Environmental Council
Ruth Lemmon	WV Auto/Truck Dealers Association

## **OLD BUSINESS:**

Secretary Huffman called the meeting to order at 1:35 p.m., and he announced that Members Lisa Dooley and Larry Harris would not be attending. On motion made by Mr. Raney and seconded by Ms. Hallinan, the Council approved the minutes from the March 18, 2008 meeting. Secretary Huffman then ceded the floor to Mr. Franks.

## **NEW BUSINESS:**

Mr. Franks noted that for the 2009 regular legislative session, DEP was proposing changes to 20 rules, grouped by Division for presentation to the Council. Depending on who had shepherded the rule through its initial drafting, either Mr. Franks or Ms. Watson would lead the discussion, with program administrators available to assist in answering the Council's questions.

Ms. Watson presented 60 CSR 3, the "Brownfields" Rule. Ms. Watson explained that the Rule was currently pending before the Secretary of State for authorization as an emergency rule, and that the proposed changes included adjustments to the "de minimis" table and enhancing DEP's flexibility in obtaining risk assessments.

Ms. Price referred to a letter recently sent to DEP seeking clarification of the Rule's provisions concerning land use covenants and long-term maintenance agreements. Secretary Huffman stated that the letter would be retrieved and the issue noted for further consideration by the agency.

Mr. Raney inquired whether the Council could recommend changes to the rules as presented. Ms. Watson responded in the affirmative. Mr. Raney then asked whether written comments, such as those submitted by Mr. Harris prior to the meeting, would be appended to the minutes. Mr. Franks responded in the negative, and Ms. Watson expounded that Mr. Harris's comments would be summarized and addressed orally during the discussion of the particular rules involved.

Mr. Franks then presented 38 CSR 2, the Surface Mining Reclamation Rule. Mr. Franks explained that the proposed changes would expand the Secretary's oversight of "approved persons" authorized to render technical certifications contained within mining permit applications, and would clarify certain collateral activities as being within the scope of requests for incidental boundary revisions to existing permits. Mr. Franks also noted that the proposed Rule would set forth more relevant and exacting criteria for the Secretary to consider in evaluating applications for revisions.

Mr. Raney inquired generally about the provisions with respect to approved persons. Secretary Huffman replied that the increased oversight is necessary to improve the initial quality of the permit applications, such that the delays occasioned by subsequent corrections would be reduced or eliminated. Mr. Raney asked whether approved persons could include anyone other than engineers, and Mr. Halstead responded that the definition extended to surveyors and geologists. Mr. Raney noted the need to establish a procedure for suspension or revocation to limit the agency's unfettered discretion, to which Secretary Huffman and Mr. Franks replied that the Rule provided for notice and hearing prior to curtailing the privileges of anyone on the approved-person list.



Ms. Watson presented 47 CSR 30, establishing NPDES requirements for coal mining facilities. Ms. Watson explained that the proposed changes were relatively minor, designed to enhance consistency with the non-coal rule, to allow for digital signatures, and to permit correction of clerical errors.

The Council then considered the Air Quality rules. Mr. Franks presented 45 CSR 1 and 45 CSR 26, relating to control and reduction of nitrogen oxides from, respectively, non-electric and electric generating units, the latter by means of a budget trading program. The rules are to be repealed in their entireties, and Mr. Mason explained that both are being subsumed within the Clean Air Interstate Rule program.

Mr. Franks then presented 45 CSR 8, the Ambient Air Quality Rule. Mr. Franks explained that the 1-hour primary and secondary ozone standards were being replaced with 8-hour standards, with the maximum tolerance being reduced slightly. Mr. Raney inquired as to the practical effect of the proposed change, particularly with regard to whether non-compliance areas within the State might be expanded. Mr. Mason replied that an expansion might occur, but that it was difficult to predict at this early stage. Mr. Mason added that the time-period increase would inevitably lead to more accurate measurements.

Ms. Watson presented 45 CSR 13, governing permits for constructing and modifying non-major stationary sources of air pollutants. Ms. Watson explained that the Rule was being amended to reflect the recent statutory changes reducing the lag time for issuing permits and authorizing certain pre-permit construction. It was noted that Mr. Harris had submitted in writing his concern that courts would be loath to enforce agency cease-and-desist orders based on defects discovered during the permitting process after construction had already begun. Ms. Watson pointed out that the statute had been carefully crafted to avoid facile invocation of detrimental reliance, with Mr. Franks observing that the Rule strove to conform to the statute. Ms. Price wondered whether one or more of the timeframe provisions included within the existing Rule had been inadvertently omitted from the proposed version. Ms. Watson responded that the Rule had been carefully checked for completeness, but that she would once again verify the language to assure its accuracy.

Mr. Franks presented 45 CSR 14, governing permits for constructing and significantly modifying major stationary sources of air pollutants. Mr. Franks explained that references to pollution control projects and clean units were deleted in accordance with a federal appellate court decision vacating those provisions.

Mr. Franks went on to present 45 CSR 16, 45 CSR 25, and 45 CSR 34, relating respectively to performance standards for new stationary sources, pollution from hazardous waste treatment, storage, and disposal facilities, and emission standards for hazardous air pollutants. Mr. Mason noted that the changes incorporate revisions to the Rules' federal counterparts, except that some of the new standards were not incorporated within 45 CSR 34, because they constituted unfunded mandates. Mr. Garvin was recognized, and he asked whether the failure to incorporate equated to a lack of regulation. Mr. Mason responded in the negative, explaining that the monitoring and regulation would be performed by the federal government. Mr. Garvin inquired as to the affected industries, and Mr. Mason referred to a list including smaller gas facilities and paint-stripping shops.

Ms. Watson presented 45 CSR 37, detailing the budget trading program to reduce mercury emissions. Ms. Watson explained that the rule is being repealed as inconsistent with a federal appellate court decision, pending alternative action by the EPA. Mr. Garvin inquired whether the Rule repealed two years ago would be reinstated upon revocation of the current version, to which Ms. Watson and Mr. Franks replied that it would not, if there had indeed been a previous rule in place, which was somewhat in question. Mr. Mason explained that mercury emissions would be monitored and regulated as usual, except that budget trading would not be available as a method of reduction. He also stated that there have been discussions on a national level as to whether to reinstate the federal mercury monitoring requirements.

The Council then turned its attention to the Water and Waste Management Rules. Ms. Watson presented 33 CSR 20, governing hazardous waste management systems. Ms. Watson explained that the Rule incorporated by reference its federal counterpart, the most salient change to which is its attempt to reduce disposal by permitting facilities to stage hazardous waste for three days pending recycling. Mr. Raney asked whether three days was sufficient time, and Mr. Cather responded in the affirmative.

Mr. Franks presented 33 CSR 24, the Hazardous Waste Management Fee Rule. Mr. Franks explained that increases to the fee assessments are necessary to sustain the underlying Fund by ensuring sufficient matching revenue for federal grants. Ms. Price indicated her belief that, as part of the legislative compromise extending the fee's duration, no increases would be forthcoming until completion and review of the Fund's legislative audit. Secretary Huffman responded that the preliminary audit findings in no way indicate any misallocation within the Fund or contravene the agency's determination that fee increases are necessary. Ms. Lemmon was recognized, and she commented that the proposed increase was unfair to automobile and truck dealers, as well as other small generators. Ms. Lemmon suggested that a study be done to identify the industries causing DEP to incur program costs, with fee assessments to be made proportionately.

Ms. Watson presented 33 CSR 22 and 47 CSR 56, governing the assessment of civil administrative penalties for, respectively, hazardous and solid waste violations and violations relating to groundwater. Ms. Watson explained that the Rules were being modified for the first time since their initial promulgation, with the purpose of clarifying their application by listing additional factors to be considered in calculating penalties, providing ratings examples, and expanding facility categories.

Ms. Watson then presented 47 CSR 31, addressing the State Water Pollution Control Revolving Fund. Ms. Watson explained that the proposed changes include the creation of a state review process for sewer projects in lieu of a wholesale adoption of the federal requirements. Mr. Roberts observed that many of the eligibility criteria would be deleted, but Ms. Emery assured the Council that inasmuch as the criteria were not being uniformly met, the deletion would have no practical effect on the Fund's administration. Ms. Watson advised Mr. Roberts that if he continued to have concerns upon further review, he should submit written suggestions for changes during the formal comment period.

Mr. Franks presented 47 CSR 32, governing the certification of laboratories conducting analyses of waste and wastewater. Mr. Franks explained that the proposed changes are designed to modernize outdated procedures and protocols that have remained constant since 1995, and to increase program funding through increased certification fees and a new application fee. Mr. Raney asked whether the new fees would render the program self-sustaining, and Mr. Arnold replied that it would for the time-being. In response to further inquiry, Mr. Arnold stated that DEP conducts annual, on-site audits of commercial and industrial labs, with municipal labs typically audited every two years, depending on the experience of the support personnel.

Ms. Watson presented 47 CSR 34, the Dam Safety Rule. Ms. Watson explained that the Rule is being extensively augmented to govern disbursement and use of a new Revolving Fund to finance repair and rehabilitation of deficient dams. Secretary Huffman commented that it appeared imminent that the Legislature would approve a transfer of \$350,000 from excess general revenue as seed money for the Fund.

Lastly, Ms. Watson presented 47 CSR 2, the Water Quality Standards Rule. Ms. Watson explained that the proposed revisions are designed to clarify the definition of Category A use, while providing specific standards to be applied in the permitting process to determine in a more streamlined fashion whether the use is unsuitable in cases of insufficient flow and hydrologic modification. Mr. Raney commented that the Category A determination process has always been a significant problem for the coal industry. Ms. Price also agreed for her members. Mr. Garvin noted that the environmental community had expressed some initial concern regarding the proposed streamlining mechanisms, but that there was some general support for taking the matter out of the legislative arena. Mr. Huffman affirmed that the revisions are designed solely for the benefit of the regulated public and that the revisions must include the clarification that Category A applies statewide.

Ms. Watson reported that the rules will proceed to be filed with the Secretary of State, some perhaps as early as the week following the Council meeting, and that some will have an extended 45-day comment period.

Mr. Franks requested closing comments from Council members and from the public. Following the cessation of discussion, Mr. Franks reminded the Council that the next meeting is scheduled for 1:30 p.m. on September 9, 2008.

Secretary Huffman declared the meeting adjourned at 3:25 p.m.

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: 45CSR8 - "Ambient Air Quality Standards"  
 Type of Rule:  Legislative  Interpretive  Procedural  
 Agency: Division of Air Quality  
 Address: 601 57<sup>th</sup> Street SE  
Charleston, WV 25304

Phone Number: 926-0475 Email: tmowrer@wvdep.org

**Fiscal Note Summary**

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

The proposed revisions to this rule should cause no additional impact on costs and revenues of state government.

**Fiscal Note Detail**

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

**FISCAL YEAR**

Effect of Proposal	2009 Increase/Decrease (use "-")	2010 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>	\$ 0	\$ 0	\$ 0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs & Alterations	0	0	0
Assets	0	0	0
Equipment	0	0	0
Other	0	0	0
<b>2. Estimated Total Revenues</b>	0	0	0

Rule Title: 45CSR8 - "Ambient Air Quality Standards"

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

The proposed revisions to this rule will have a minimal effect on the costs to the Division of Air Quality because they impose no additional requirements beyond current federal requirements. Costs are covered under previous cost estimates.

### MEMORANDUM

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

Date: \_\_\_\_\_

7/11/08

Signature of Agency Head \_\_\_\_\_



2008 AUG 29 AM 11:04

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

SECRETARY OF STATE  
STATE OF WEST VIRGINIA

SERIES 8  
AMBIENT AIR QUALITY STANDARDS

**§45-8-1. General.**

1.1. Scope. -- This rule establishes ambient air quality standards in West Virginia for sulfur oxides, particulate matter, carbon monoxide, ozone, nitrogen dioxide and lead, equivalent to the national primary and secondary ambient air quality standards established under Section 109 of the Clean Air Act, and promulgated by the United States Environmental Protection Agency under 40 CFR §§50.4 through 50.12. National primary ambient air quality standards define levels of air quality which the Administrator judges are necessary, with an adequate margin of safety, to protect the public health. National secondary ambient air quality standards define levels of air quality which the Administrator judges necessary to protect the public welfare from any known or anticipated adverse effects of a pollutant. Such standards are subject to revision, and additional primary and secondary standards may be promulgated as the Administrator deems necessary to protect the public health and welfare.

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

1.3. Filing Date. -- ~~April 23, 2008.~~

1.4. Effective Date. -- ~~June 1, 2008.~~

1.5. ~~Repealed provisions. -- The repealed provisions contained in 45CSR9 - "Ambient Air Quality Standards for Carbon Monoxide and Ozone" relating to national ambient air quality standards for carbon monoxide and ozone, and the repealed provisions of 45CSR12 - "Ambient Air Quality Standard for Nitrogen Dioxide" relating to national ambient air quality standards for nitrogen dioxide have been revised to be consistent with~~

~~the ambient air quality standards set forth in 40 CFR §§50.8 through 50.11, and are contained in this rule as of the effective date set forth in subsection 1.4.~~

—1.6. Former Rules. -- This legislative rule amends 45CSR8 - "Ambient Air Quality Standards for Sulfur Oxides and Particulate Matter" which was filed on ~~April 16, 2002~~ April 23, 2008 and became effective on ~~July 1, 2002~~ June 1, 2008.

**§45-8-2. Anti-Degradation Policy.**

2.1. Pursuant to the best interests of the State of West Virginia, it is the objective of the Secretary to obtain and maintain the cleanest air possible, consistent with the best available technology.

2.2. Where the present ambient air is of better quality than the established standards, the Secretary will develop long-range plans to protect the difference between the present quality and the established standards. The plans will be based upon the best available forecasts of probable land and air uses in these areas of high air quality.

2.3. The air quality of these areas will not be lowered unless it has been clearly demonstrated to the Secretary that such a change is justifiable as a result of necessary economic or social development and will not result in statutory air pollution. This will require that any industrial, public, or private project or development which could constitute a new source of air pollutants, within an area of such high air quality, provide the best practicable control available under existing technology as part of the initial project or development.

2.4. The promulgation of primary and secondary ambient air quality standards shall not be considered in any manner to allow significant deterioration of existing air quality in any portion of West Virginia.

### §45-8-3. Definitions.

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

3.2. "Air Pollutants" means solids, liquids, or gases which, if discharged into the air, may result in a statutory air pollution.

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

3.4. "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

3.5. "Ambient Air Quality Standards" means the numerical expression of a specified concentration level for a particular air pollutant in the ambient air and the time averaging interval over which that concentration level is measured.

3.6. "Clean Air Act" or "CAA" means the federal Clean Air Act, as amended, 42 U.S.C. §7401 et seq.

3.7. "Equivalent method" means a method of sampling and analyzing the ambient air for an air pollutant that has been designated as an equivalent method in accordance with 40 CFR Part 53; it does not include a method for which an equivalent method designation has been cancelled in accordance with 40 CFR §53.11 or 40 CFR §53.16.

3.8. "Ozone" means the triatomic oxygen molecule (O<sub>3</sub>), a very reactive form of oxygen.

3.9. "Particulate Matter" means any material, except uncombined water, that exists in a finely divided form as a liquid or solid.

3.10. "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 country, and any firm, partnership or association of whatever nature.

3.11. "PM<sub>2.5</sub>" means particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers.

3.12. "PM<sub>10</sub>" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers.

3.13. "Reference method" means a method of sampling and analyzing the ambient air for an air pollutant that is specified as a reference method in an appendix to this part, or a method that has been designated as a reference method in accordance with 40 CFR Part 53; it does not include a method for which a reference method designation has been cancelled in accordance with 40 CFR §53.11 or 40 CFR §53.16.

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

3.15. 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. and 40 CFR §50.1. Words and phrases not defined therein shall have the meaning given to them in the federal Clean Air Act.

### §45-8-4. Ambient Air Quality Standards.

4.1. Standards for Sulfur Oxides. -- No person shall allow emissions of sulfur oxides to the ambient air in any manner which causes or significantly contributes to an exceedance of the following primary and secondary ambient air quality standards:

4.1.a. Annual Arithmetic Mean Concentration. -- The level of the annual primary standard for sulfur oxides is 0.030 parts per million (ppm) and 80 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ), not to be exceeded in a calendar year. The annual arithmetic mean shall be rounded to three decimal places (fractional parts equal to or greater than 0.0005 ppm shall be rounded up).

4.1.b. Maximum 24-Hour Concentration. -- The level of the 24-hour primary standard for sulfur oxides is 0.14 ppm ( $365 \mu\text{g}/\text{m}^3$ ), not to be exceeded more than once per calendar year. The 24-hour averages shall be determined from successive non-overlapping 24-hour blocks starting at midnight each calendar day and shall be rounded to two decimal places (fractional parts equal to or greater than 0.005 ppm shall be rounded up).

4.1.c. To demonstrate attainment with the sulfur oxides primary standards in subdivisions 4.1.a and 4.1.b, the annual arithmetic mean and the second-highest 24-hour averages must be based upon hourly data that are at least 75 percent complete in each calendar quarter. A 24-hour block average shall be considered valid if at least 75 percent of the hourly averages for the 24-hour period are available. In the event that only 18, 19, 20, 21, 22, or 23 hourly averages are available, the 24-hour block average shall be computed as the sum of the available hourly averages using 18, 19, etc. as the divisor. If fewer than 18 hourly averages are available, but the 24-hour average would exceed the level of the standard when zeros are substituted for the missing values, subject to the rounding in subdivision 4.1.b, then this shall be considered a valid 24-hour average. In this case, the 24-hour block average shall be computed as the sum of the available hourly averages divided by 24.

4.1.d. Maximum Three (3) Hour Concentration. -- The level of the 3-hour secondary standard for sulfur oxides is 0.5 ppm, ( $1300 \mu\text{g}/\text{m}^3$ ), not to be exceeded more than once per year. The 3-hour averages shall be determined from successive non-overlapping 3-hour blocks starting at midnight each calendar day and shall be

rounded to one decimal place (fractional parts equal to or greater than 0.05 ppm shall be rounded up).

4.1.e. To demonstrate attainment with the sulfur oxides secondary standard in subdivision 4.1.d, the second-highest 3-hour average must be based upon hourly data that are at least 75 percent complete in each calendar quarter. A 3-hour block average shall be considered valid only if all three hourly averages for the 3-hour period are available. If only one or two hourly averages are available, but the 3-hour average would exceed the level of the standard when zeros are substituted for the missing values, subject to the rounding in subdivision 4.1.d, then this shall be considered a valid 3-hour average. In all cases, the 3-hour block average shall be computed as the sum of the hourly averages divided by three.

4.2. Standards for Particulate Matter. -- No person shall allow emissions of particulate matter to the ambient air in any manner which causes or significantly contributes to an exceedance of the following primary and secondary ambient air quality standards:

4.2.a.  $\text{PM}_{10}$  Maximum 24-Hour Average Concentration. -- The level of the primary and secondary 24-hour standards for  $\text{PM}_{10}$  is  $150 \mu\text{g}/\text{m}^3$ . The standards are attained when the expected number of days per calendar year with a 24-hour average concentration above  $150 \mu\text{g}/\text{m}^3$ , as determined in accordance with Appendix K of 40 CFR Part 50, is less than or equal to one.

4.2.b.  $\text{PM}_{2.5}$  Maximum Annual Arithmetic Mean Concentration. -- The level of the annual primary and secondary standards for  $\text{PM}_{2.5}$  are  $15.0 \mu\text{g}/\text{m}^3$ . The standards are met when the annual arithmetic mean concentration, as determined in accordance with Appendix N of 40 CFR Part 50, is less than or equal to  $15.0 \mu\text{g}/\text{m}^3$ .

4.2.c.  $\text{PM}_{2.5}$  Maximum 24-Hour Average Concentration. -- The level of the 24-hour primary and secondary standards for  $\text{PM}_{2.5}$  are  $35 \mu\text{g}/\text{m}^3$ . The standards are met when the 98<sup>th</sup> percentile



24-hour concentration, as determined in accordance with Appendix N of 40 CFR Part 50, is less than or equal to  $35 \mu\text{g}/\text{m}^3$ .

4.3. Standards for Carbon Monoxide. -- No person shall allow emissions of carbon monoxide to the ambient air in any manner which causes or significantly contributes to an exceedance of the following primary ambient air quality standards:

4.3.a. Maximum Eight (8) Hour Average Concentration. -- The level of the primary 8-hour standard for carbon monoxide is 9 ppm and  $10 \text{ mg}/\text{m}^3$ , not to be exceeded more than once per year. An 8-hour average shall be considered valid if at least 75 percent of the hourly average for the 8-hour period are available. In the event that only six (or seven) hourly averages are available, the 8-hour average shall be computed on the basis of the hours available using six (or seven) as the divisor.

4.3.b. Carbon Monoxide Maximum One (1) Hour Average concentration. -- The level of the primary 1-hour standard for carbon monoxide is 35 ppm ( $40 \text{ mg}/\text{m}^3$ ), not to be exceeded more than once per year.

4.3.c. When summarizing data for comparison with the primary carbon monoxide standards under subdivisions 4.3.a and 4.3.b, averages shall be stated to one decimal place. Comparison of the data with the levels of the standards in parts per million shall be made in terms of integers with fractional parts of 0.5 or greater rounding up.

4.4. Standards for Ozone. -- No person shall allow emissions of ozone to the ambient air in any manner which causes or significantly contributes to an exceedance of the following primary and secondary ambient air quality standards:

~~4.4.a. One-Hour Primary and Secondary Standards. -- The level of the one (1) hour primary and secondary ambient air quality standards for ozone is  $0.12 \text{ ppm}$  ( $235 \mu\text{g}/\text{m}^3$ ). The standards are attained when the expected number of days per calendar year with maximum hourly average~~

~~concentrations above  $0.12 \text{ ppm}$  ( $235 \mu\text{g}/\text{m}^3$ ) is equal to or less than one (1), as determined by Appendix H to 40 CFR Part 50.~~

~~4.4.b. Eight-Hour Primary and Secondary Standards. -- The level of the eight (8) hour primary and secondary ambient air quality standards for ozone is  $0.08$   $0.075$  ppm, daily maximum 8-hour average. The 8-hour primary and secondary ozone ambient air quality standards are met at an ambient air quality monitoring site when the average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to  $0.08$   $0.075$  ppm, as determined in accordance with Appendix P to 40 CFR Part 50.~~

~~4.5. Revocation of One-Hour Ozone Standards. -- Except as provided in subsection 4.6, the one-hour primary and secondary ambient air quality standards for ozone under subdivision 4.4.a are revoked effective June 15, 2005 for all areas in West Virginia except for Berkeley and Jefferson counties.~~

~~4.6. Maintenance Areas for the One-Hour Ozone Standards. -- The Charleston, Greenbrier County, Huntington-Ashland, and Parkersburg areas are maintenance areas for the one-hour primary and secondary ambient air quality ozone standard under subdivision 4.4.a for purposes of 40 CFR Part 51, Subpart X.~~

~~4.7. Standards for Nitrogen Dioxide. -- No person shall allow emissions of nitrogen dioxide to the ambient air in any manner which causes or significantly contributes to an exceedance of the following primary and secondary ambient air quality standards:~~

~~4.7.a. 4.5.a. Maximum Annual Arithmetic Mean Concentration. -- The level of the annual primary and secondary standards for nitrogen dioxide is  $0.053 \text{ ppm}$  and  $100 \mu\text{g}/\text{m}^3$ . The standards are attained when the annual arithmetic mean concentration in a calendar year is less than or equal to  $0.053 \text{ ppm}$ , rounded to three decimal places (fractional parts equal to or greater than~~

0.0005 ppm must be rounded up). To demonstrate attainment, an annual mean must be based upon hourly data that are at least 75 percent complete or upon data derived from manual methods that are at least 75 percent complete for the scheduled sampling days in each calendar quarter.

~~4.8.~~ 4.6. Standards for Lead. -- No person shall allow emissions of lead and its compounds, measured as elemental lead, to the ambient air in any manner which causes or significantly contributes to an exceedance of the following primary and secondary ambient air quality standards:

~~4.8.a.~~ 4.6.a. Maximum Arithmetic Mean Concentration. -- The level of the primary and secondary ambient air quality standard for lead and its compounds, measured as elemental lead by a reference method based on Appendix G of 40 CFR Part 50, or by an equivalent method, are 1.5  $\mu\text{g}/\text{m}^3$ , averaged over a calendar quarter.

#### **§45-8-5. Methods of Measurement.**

5.1. For the purpose of determining attainment of the primary and secondary  $\text{PM}_{10}$  standards under subdivision 4.2.a, particulate matter shall be measured in the ambient air as  $\text{PM}_{10}$  by:

5.1.a. A reference method based on Appendix J of 40 CFR Part 50 and designated in accordance with 40 CFR Part 53; or

5.1.b. An equivalent method designated in accordance with 40 CFR Part 53.

5.2. For the purpose of determining attainment of the primary and secondary sulfur oxides standards under subsection 4.1, sulfur oxides shall be measured in the ambient air as sulfur dioxide by:

5.2.a. The reference method described in Appendix A of 40 CFR Part 50 ; or

5.2.b. An equivalent method designated in accordance with 40 CFR Part 53.

5.3. For the purpose of determining attainment of the primary and secondary  $\text{PM}_{2.5}$  standards under subdivisions 4.2.b and 4.2.c, particulate matter shall be measured in the ambient air as  $\text{PM}_{2.5}$  by:

5.3.a. A reference method based on Appendix L of 40 CFR Part 50 and designated in accordance with 40 CFR Part 53; or

5.3.b. An equivalent method designated in accordance with 40 CFR Part 53.

5.4. For the purpose of determining attainment of the primary carbon monoxide standards under subsection 4.3, carbon monoxide concentrations shall be measured in the ambient air by:

5.4.a. A reference method based on Appendix C of 40 CFR Part 50 and designated in accordance with 40 CFR Part 53; or

5.4.b. An equivalent method designated in accordance with 40 CFR Part 53.

5.5. For the purpose of determining attainment of the primary and secondary ozone standards under subsection 4.4, ozone concentrations shall be measured in the ambient air by a reference method based on Appendix D to 40 CFR Part 50 and designated in accordance with 40 CFR Part 53.

5.6. For the purpose of determining attainment of the primary and secondary nitrogen dioxide standards under subsection 4.7, nitrogen dioxide concentrations shall be measured in the ambient air by:

5.6.a. A reference method based on Appendix F of 40 CFR Part 50 and designated in accordance with 40 CFR Part 53; or

5.6.b. An equivalent method designated in accordance with 40 CFR Part 53.

5.7. For the purpose of determining attainment of the primary and secondary lead standards

under subsection 4.8, lead concentrations shall be measured as elemental lead in the ambient air by:

5.7.a. A reference method based on Appendix G of 40 CFR Part 50; or

5.7.b. An equivalent method.

**§45-8-6. Reference Conditions.**

6.1. All measurements of air quality that are expressed as mass per unit volume (e.g., micrograms per cubic meter) other than for the PM<sub>2.5</sub> standards contained in subdivisions 4.2.b and 4.2.c shall be corrected to a reference temperature of 25°C and a reference pressure of 760 millimeters of mercury (1013.2 millibars). Measurements of PM<sub>2.5</sub> for purposes of comparison to the standards contained in subdivisions 4.2.b and 4.2.c shall be reported based on actual ambient air volume measured at the actual ambient temperature and pressure at the monitoring site during the measurement period.

**§45-8-7. Inconsistency Between Rules.**

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

**ORIGINAL**

BEFORE THE DEPARTMENT OF ENVIRONMENTAL PROTECTION  
DIVISION OF AIR QUALITY

IN THE MATTER OF:

PROPOSED REVISIONS TO RULE  
45CSR8, AMBIENT AIR QUALITY  
STANDARDS

**TRANSCRIPT OF PROCEEDINGS** had or testimony adduced pursuant to the West Virginia Rules of Civil Procedure in the above-entitled action, on the 11<sup>th</sup> day of August, 2008, commencing at 6:12 p.m. and concluding at 6:15 p.m., at the West Virginia Department of Environmental Protection, 601 57<sup>th</sup> Street S.E., Charleston, Kanawha County, West Virginia, taken by Jo Ann Wilson, Certified Court Reporter, duly certified by the West Virginia Supreme Court of Appeals and Notary of West Virginia, pursuant to notice to all interested parties.

BEFORE: JAMES MASON, Moderator

**NANCY MCNEALY**  
CERTIFIED COURT REPORTER  
Post Office Box 13415  
Charleston, West Virginia 25360-0415  
(304) 988-2873 FAX (304) 988-1419

I N D E X

Reporter's Certificate.....Page 5

1           MR. MASON: This public hearing will now  
2 come to order on this 11<sup>th</sup> day of August, 2008 at the West  
3 Virginia Department of Environmental Protection  
4 Headquarters. Comments and testimony will be accepted  
5 until the close of this hearing, and will be made part of  
6 the rulemaking record. Any question regarding revisions to  
7 the rules, or repeal, will be included in with your  
8 comments. Any such question will be answered as part of  
9 the response to comments in the rulemaking record.

10           The purpose of this public hearing is to  
11 satisfy state rulemaking requirements by accepting comments  
12 on proposed revisions to Rule 45CSR8, Ambient Air Quality  
13 Standards. This rule establishes ambient air quality  
14 standards for sulfur oxides, particulate matter, carbon  
15 monoxide, ozone, nitrogen dioxide and lead, equivalent to  
16 those national primary and secondary Ambient Air Quality  
17 Standards, or NAAQS, established by the U.S. Environmental  
18 Protection Agency.

19           Because EPA has revised the 8-hour primary  
20 and secondary ozone NAAQS, the Division of Air Quality has  
21 revised and updated 45CSR8 to reflect these revised  
22 standards. Revisions to the rule also include deletions of  
23 references to the obsolete 1-hour ozone NAAQS.

24           The Division of Air Quality will provide

1 EPA with a separate 30-day review and comment period, and  
2 upon authorization and promulgation of 45CSR8, the Division  
3 will submit the rule to the U.S. Environmental Protection  
4 Agency as a revision to the State Implementation Plan,  
5 pursuant to the federal Clean Air Act.

6 The floor is now open for comments. Please  
7 state your name and any affiliation.

8 (There being no comments,  
9 Proceedings resumed as follows.)

10 MR. MASON: There being nothing further,  
11 this public hearing for Proposed Rule 45CSR8 is concluded.

12 (WHEREUPON, the public hearing was concluded.)

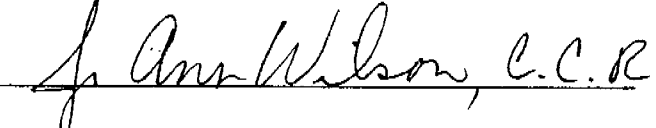
**REPORTER'S CERTIFICATE**

STATE OF WEST VIRGINIA,  
COUNTY OF KANAWHA, to wit:

I, **JO ANN WILSON**, Certified Court Reporter, do hereby certify that the foregoing is, to the best of my skill and ability, a true and accurate transcript of all the proceedings as set forth in the caption hereof.

Given under my hand this 20<sup>th</sup> day of August,  
2008.

My commission expires July 10, 2016.

  
Certified Court Reporter







**SIERRA CLUB**  
**WEST VIRGINIA CHAPTER**  
P. O. Box 4142  
Morgantown, WV 26504

Aug. 10, 2008

West Virginia Division of Air Quality  
Department of Environmental Protection,  
601 57<sup>th</sup> Street S.E.,  
Charleston, WV 25304.

Re: Comments on Air Rules.

Please accept the following comments on behalf of the West Virginia Chapter of Sierra Club.

1. 45-CSR-1. No comments.
2. 45-CSR-13 (Construction permits) incorporates new provisions pursuant to HB 4438 from the 2008 Legislature. This bill allows applicants to begin construction prior to obtaining a final construction permit.

2.A. 45-CSR-13. Section 4.1.b. requires that the secretary issue administrative updates within 60 days after receipt of a complete application. While this is reasonable for Class I administrative updates, Class II administrative updates are those that allow emissions increases, changes in operating parameters, changes in emissions points, or changes in control equipment. These also require public notice and comment, and agency staff need time to respond to such comment and incorporate those comments into their decisions. Therefore, we recommend that the 60-day time limit apply only to Class I administrative updates.

2.B. 45-CSR-13 Section 5.7.a requires the Secretary to issue a permit within 90 days of certifying that an application is complete. The original language of the rule specified that the Secretary had 180 days to reach a decision. We continue to object to this 90-day limit as it does not provide agency staff with adequate time to review complex permits, and it does not provide adequate time for the public to review a permit and provide meaningful input. The change is clearly an attempt to limit public participation and is contrary to the intent of the Clean Air Act. In many cases, permits must also be reviewed by other agencies, including federal land managers, and environmental agencies in adjoining states. It is simply not possible to get meaningful input and resolve outstanding complex technical issues in only 90 days.

Of even greater concern is the time needed to provide technical review of permits by the public. During the recent debate over the Longview Power permit, citizens retained outside air pollution experts, filed substantive comments, and ultimately negotiated more protective air pollution limits and monitoring requirements than were originally proposed by the applicant or by DEP. These changes were agreed to by the applicant and DEP, and significantly reduced

*Not Blind Opposition To Progress. But Opposition To Blind Progress*

pollution emissions from the proposed facility. Citizens simply can not be expected to get the necessary technical expertise, allow adequate review by such experts, and file meaningful comments within a period as short as 90 days. Thus the effect of this change, as illustrated by the Longview permit, would be to allow greater pollution emissions, a clear violation of the requirement for Best Available Control Technology limits in air permits.

We recommend that the proposed language be revised to allow 120 days for permit review, with an additional 60 days when the Secretary receives a request for additional time for public comment or when the source constitutes a major source. Alternatively, the rule should be revised to require that all public and agency comment has been received before the permit is determined to be "administratively complete."

2.C. 45-CSR-13. Section 16.3. Application Requirements for permission to commence construction in advance of permit issuance. The requirements for such an applicant should be expanded to assist the agency with its permit review and to assure the applicant that its proposed emissions limits and control technologies will comply with the Clean Air Act. At a minimum, the applicant should be required to submit information documenting that the emissions limits and pollution control technologies will comply with the Best Available Control Technology requirements of the Clean Air Act. This should include a listing of the best performing comparable facilities, the emissions levels that have been permitted and have been achieved, and a review of permit limits issued recently for comparable facilities elsewhere.

This approach will help DEP achieve an adequate review within reasonable time limits. More importantly, it would help the applicant by assuring that their proposed technologies will be achieved, and that significant changes will not be required after construction has begun. A similar BACT process is already required for major sources in West Virginia, and for non-major sources in some other states. While this would not make such a BACT process mandatory for all minor sources, those that wish the extra privilege of permission for early construction should be willing to take the extra steps of assuring that their pollution controls really are among the best available.

We recommend language such as the following:

"16.3.k. A listing of alternative pollution control technologies or methods which results in the most stringent emission limitation or control technology which has been achieved in practice for such category or class of source; or which is contained in any state implementation plan (SIP) approved by the United States Environmental Protection Agency (EPA) for such category or class of source.

2.D. 45-CSR-13. Section 16.2 describes eligibility requirements for applicants for a permit to commence construction in advance of permit issuance. An additional limitation is needed for ineligible facilities: "16.6.2.d. Sources located in areas designated as nonattainment areas under the "Federal Clean Air Act".

The rule already requires that the Secretary find that the permission to construct would not jeopardize attainment areas, this amendment simply clarifies that no permits would therefore be allowed in nonattainment areas. "Nonattainment areas" are those parts of the state where air quality does not meet federal air quality standards. Adding more pollution in these areas would make an already unhealthy situation worse. Persons living in areas that already have unhealthy levels of air pollutants should not be subject to further additional pollution unless those sources can contribute to further progress toward attainment. It is already difficult enough to bring an area back into attainment, and allowing expedited approval of new sources in these areas will undermine existing attainment plans. This will impose significant federal penalties that are certainly more detrimental to economic development than the current regulatory process. Limiting the preconstruction approvals to areas that are already in attainment will help focus

economic development in areas that need it the most, while protecting the air quality of the people who are among the most threatened.

2.E. 45-CSR-13. Section 16.6.a. This section requires that the Secretary determine that an applicant for permission to construct be "in substantial compliance" with all other active permits for the last three years. Unfortunately, the term "substantial" is not defined, and leaves excessive discretion for the secretary to overlook or disregard significant non-compliances with existing active permits. There have been numerous examples in recent years where both the permittee and the DEP have claimed that a facility is in compliance, only to find that it is emitting significantly more pollutants than was authorized by permit. The Fib-Air facility in Preston County claimed to be in compliance with all of its permit conditions, but stack monitoring demonstrated that it was emitting 5 times the permitted level of formaldehyde. DEP's response was to issue a Notice of Violation, but then settle by entering into a Consent decree by which the permit limits were raised to legalize the previously illegal pollution emissions. More recently, the John Amos plant has been implicated as the source of the "Blue Haze" events in the Kanawha Valley. They claimed to be in compliance, but monitoring showed excessive emissions of sulfur oxides identified as precursors of the problems.

The Clean Air Act does not distinguish "substantial" and "insubstantial" violations. Even routine reporting problems are considered substantial because these are crucial to the monitoring and enforcement of air permit conditions.

For these reasons we recommend deleting the word "substantial" from this section.

2.F. 45-CSR-13. Section 16.6.b-f. These sections identify conditions for issuance of a permit to begin construction. Unfortunately, the wording appears to be overly broad, and would allow construction to begin on facilities that do not meet BACT requirements of the Clean Air Act. For example, an applicant could claim that a new unit is not a major modification of a major source, and further claim that this new unit would reduce emissions compared to an older unit being retired. However, the failure to conduct a complete BACT analysis may lead to selection of pollution control technologies that are less effective than the Best Available Control Technologies. If the old existing unit has emissions of 10 pounds per hour of pollutant X, the proposed new unit would only emit nine pound per hour, but the BACT would be 1 pound per hour, then the applicant would be proposing to use a technology that emits nine times more of Pollutant X than would be allowed under BACT. The language of these sections would allow construction to start, even though later analysis or public comment would demonstrate that an alternative technology is required. Hence these sections should be re-written to require that the applicant document the current Best Available Technology at comparable facilities elsewhere. Although it could be argued that section 16.6.b. already implies such application requirements, the rule should state this explicitly.

3. 45-CSR-8 Air Pollution Standards. Section 4.2.b. leaves the annual PM<sub>2.5</sub> standard at 15.0 ug/m<sup>3</sup>. It is well-established that this standard does not meet the Clean Air Act requirement of protecting human health with an adequate margin of safety. EPA's Clean Air Science Advisory Committee recommends that the limit be set no greater than 14.0 ug/m<sup>3</sup>, and we urge DEP to adopt this standard. We recognize that this is more stringent than the current federal standard, but DEP should begin phasing in this standard now, at least in their permit determinations for new sources.

4. 45-CSR-14. We applaud the proposed deletions of the so-called "Clean Unit" exemptions and the exemptions for so-called "Pollution Control Projects". You will recall that we urged these changes in our comments on the 2005 rule amendments. We urge you to go one step further and adopt the following provisions.

4.A. 45-CSR-14. Section 2.40.d. We urge that this exemption for use of fuel derived from municipal solid waste be deleted. I am unaware that this type of fuel constitutes a major use of current coal-fired power plants, and inclusion of such fuels is, in fact, a major change in the fuel source and fuel characteristics. Use of municipal solid waste has the potential to significantly alter emissions of Hazardous Air Pollutants and increase emissions of heavy metals, chlorinated hydrocarbons, and various other pollutants. Deletion of this section would not prohibit the use of Municipal solid waste, but it would allow better review of any environmentally damaging emissions before their use in power plants that were not designed for their use.

4.B. 45-CSR-14. Section 2.50, et seq. We again urge that this definition of a "Plant-wide Applicability Limit" be deleted, along with any other references to it. This change in New Source Review rules allows polluters to shift emission points and engage in a variety of other modifications that make enforcement of emissions limits exceedingly difficult for the agency. The Monitoring requirements associated with these provisions are cumbersome for the agency, and almost impossible for citizens to track and verify. Deletion of exemptions for a PAL would improve enforcement, and largely return the rule to its pre-2005 condition.

5. 45-CSR-16. No comments.

6. 45-CSR-25. No comments.

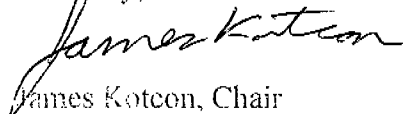
7. 45-CSR-26. No comments.

8. 45-CSR-34. It is not clear why the identified sections are being excluded from these emissions standards for Hazardous Air Pollutants. An emission standard is not an "unfounded mandate" per se, and a more appropriate location for any needed exclusions should be identified in other relevant rules.

9. 45-CSR-37. We support the deletion of this rule. This would be consistent with our comments opposing the rule when it was first adopted in 2005-06.

Thank you for the opportunity to comment. Please feel free to contact me if I can provide further information to clarify these comments.

Sincerely,



James Kotcon, Chair  
State Government Programs Committee



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

Mr. John A. Benedict, Director  
Division of Air Quality  
West Virginia Department of Environmental Protection  
601 57<sup>th</sup> St. SE  
Charleston, WV 25304

August 18, 2008

Dear Mr. Benedict:

Thank you for the opportunity to comment on West Virginia's proposed changes to Rule 45CSR8 – Ambient Air Quality Standards. We have reviewed the revisions and provide the following comments:

Section 4.4b, Eight-Hour Primary and Secondary Standard – The last sentence includes a reference to Appendix I of 40 CFR Part 50. Appendix I is applicable to the 0.08 ppm 8-hour ozone standard set forth in 40 CFR 50.10. To fully update this section to reflect the new standard, this reference must be changed to Appendix P of 40 CFR Part 50, which is applicable to the 8-hour ozone standard of 0.075 ppm specified in 40 CFR 50.15.

Section 4.5, Revocation of One-Hour Ozone Standards - This change removes the 1-hour ozone standard requirements from Berkeley and Jefferson Counties, which had 8 hour ozone nonattainment Early Action Compacts (EACs). The 1-hour ozone standard for Berkeley and Jefferson Counties will no longer apply as of April 15, 2009. Language should be included in the rule that the removal of Section 4.5 is effective upon the revocation date of the 1-hour ozone standard for these areas.

Please enter these comments into the public record. We look forward to working with you to resolve these comments. Should you have any questions pertaining to the comments, please do not hesitate to contact me, or have your staff person contact Marilyn Powers of my staff at (215) 814-2308.

Sincerely,

A handwritten signature in black ink, appearing to read "Judith M. Katz".

Judith M. Katz, Director  
Air Protection Division

cc: Fred Durham, WVDEP



## 45CSR8

### AMBIENT AIR QUALITY STANDARDS

#### RESPONSE TO COMMENTS

On July 11, 2008, the Division of Air Quality (DAQ) commenced a thirty day public comment period and subsequently held a public hearing on August 11, 2008 to accept oral comments on proposed revisions to legislative rule 45CSR8. Written comments were also accepted through 6:00 PM on Monday, August 11, 2008. Two commenters submitted written comments regarding proposed revisions to rule 45CSR8, and no commenter provided verbal comments. DAQ addresses the written comments below.

#### I. COMMENTER: Environmental Protection Agency

**COMMENT A.** The commenter states, "*Section 4.4.b, Eight-Hour Primary and Secondary standard - The last sentence includes a reference to Appendix I of 40 CFR Part 50. Appendix I is applicable to the 0.08 ppm 8-hour ozone standard set forth in 40 CFR 50.10. To fully update this section to reflect the new standard, this reference must be changed to Appendix P of 40 CFR Part 50, which is applicable to the 8-hour ozone standard of 0.75 ppm specified in 40 CFR 50.15.*"

**RESPONSE A.** The DAQ has revised the rule as recommended by the commenter.

**COMMENT B.** The commenter states, "*Section 4.5, Revocation of One-Hour Ozone Standards - This change removes the 1-hour ozone standard requirements from Berkeley and Jefferson Counties, which had 8 hour ozone nonattainment Early Action Compacts (EACs). The 1-hour ozone standard for Berkeley and Jefferson Counties will no longer apply as of April 15, 2009. Language should be included in the rule that the removal of Section 4.5 is effective upon the revocation date of the 1-hour ozone standard for these areas.*"

**RESPONSE B.** The DAQ notes that, if adopted by the West Virginia Legislature and authorized by the Governor, 45CSR8 will have an effective date of June 1, 2009. This date is after the April 15, 2009 revocation date of the 1-hour ozone standard for these areas. Therefore no revision is necessary.

#### II. COMMENTER: Sierra Club

**COMMENT A.** The commenter states, "*Section 4.2.b. leaves the annual PM<sub>2.5</sub> standard at 15.0 ug/m<sup>3</sup>. It is well-established that this standard does not meet the Clean Air Act requirements of protecting human health with an adequate margin of safety. EPA's Clean Air Science Advisory Committee recommends that the limit be set no greater than 14.0 ug/m<sup>3</sup>, and we urge DEP to adopt this standard. We recognize that this is more stringent than the current federal standard, but DEP should begin phasing in this standard now, at least in their permit determinations for new sources.*"

RESPONSE A. The commenter equates a recommended 14.0 ug/m<sup>3</sup> PM<sub>2.5</sub> concentration with a federal National Ambient Air Quality Standard (NAAQS) promulgated by the Environmental Protection Agency (EPA). If EPA follows a Clean Air Science Advisory Committee recommendation and promulgates a more stringent PM<sub>2.5</sub> NAAQS, then the West Virginia Department of Environmental Protection will adopt that promulgated standard in 45CSR8. By statute, the NAAQS found in 45CSR8 can be no more stringent than those promulgated by EPA, unless a specific finding is made pursuant to W.Va. Code §22-1-3a.