

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

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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

Form #1

**NOTICE OF A PUBLIC HEARING ON A PROPOSED RULE**

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

RULE TYPE: Legislative CITE AUTHORITY: WV 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 for Sulfur Oxides and Particulate Matter

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

DATE OF PUBLIC HEARING: Monday, July 10, 2006 TIME: 6:00 p.m.

LOCATION OF PUBLIC HEARING: WV Department of Environmental Protection  
Dolly Sods Conference Room (Room 1125)  
601 57th Street, S.E.  
Charleston, WV 25304

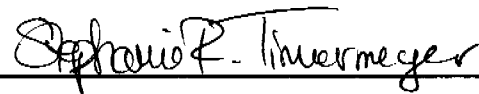
COMMENTS LIMITED TO: ORAL , WRITTEN , BOTH   
COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS:

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

John A. Benedict, Director  
Division of Air Quality  
WV Dept. of Environmental Protection  
601 57th Street, S. E.  
Charleston, WV 25304



Authorized Signature

\$7.40

**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.

The Division of Air Quality (DAQ) is streamlining the regulatory structure by consolidating all of the NAAQS into one rule. Consequently, this rule will repeal and replace 45CSR9 - "Ambient Air Quality Standards for Carbon Monoxide and Ozone" which was filed on April 16, 2002 and became effective on July 1, 2002, and 45CSR12 - "Ambient Air Quality Standard for Nitrogen Dioxide" which was filed May 19, 2000, and became effective June 1, 2000.

**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 standards for sulfur oxides, particulate matter, carbon monoxide, ozone, nitrogen dioxide and lead. West Virginia has previously met the requirements for State Implementation Plans under Section 110 of the CAA through the NAAQS standards set forth in 45CSR8, 45CSR9 and 45CSR12.

Because litigation involving particulate matter and ozone standards have been resolved and U.S. EPA has promulgated revised NAAQS standards, the DAQ has revised and updated 45CSR8 to contain all six criteria pollutants and their current NAAQS standards as they affect West Virginia, as set forth in 40 CFR §§50.4 through 50.12. 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:**

Since the proposed rule amendments are being made to 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 May 31, 2006 meeting, the Environmental Protection Advisory Council reviewed and discussed this rule. Their comments are contained in the attached minutes.

West Virginia Department of Environmental Protection

**ADVISORY COUNCIL MEETING MINUTES**

Wednesday - May 31, 2006

1:00 p.m. – 3:00 p.m.

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

West Virginia Room – 3<sup>rd</sup> Floor

**ATTENDEES:**

**Advisory Council Members:**

Larry Harris

Jackie Hallinan

Rick Roberts

Bill Raney (via conference call)

Karen Price

**DEP:**

Stephanie R. Timmermeyer, Cabinet Secretary

Randy Huffman, Deputy Cabinet Secretary/Director – Division of Mining & Reclamation

Heather A. Connolly, General Counsel

Karen G. Watson, Assistant General Counsel

Ken Ellison, Director - Division of Land Restoration

Lisa McClung, Director – Division of Water and Waste Management

John Benedict, Director – Division of Air Quality

Mike Zeto, WVDEP

Charlie Sturey, WVDEP

Lalena Price, Acting Chief Communication Officer – WVDEP – Public Information Office

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

Jim Mason – WVDEP

Bill Brannon – WVDEP

Carroll Cather – WVDEP

Terrie Sangid – WVDEP

Scott Mandirola – WVDEP

Cliff Whyte – WVDEP

John Morgan – WVDEP

Gary Rogers – WVDEP

Mike Dorsey – WVDEP

Patrick Campbell – WVDEP

Ken Politan – WVDEP

Pam Nixon – WVDEP

**VISITORS:**

Don Garvin – WVEC  
Allan S. Tweddle – WVEC  
Adam Webster – WVRC  
Tim Mallan – Appalachian Power  
Steve Keen – Bright Enterprises  
Charlie Burd – IOGA – WV  
Tom Boggs – WV Chamber

Stephanie R. Timmermeyer, Cabinet Secretary - West Virginia Department of Environmental Protection called the meeting to order at 1:00 p.m. Secretary Timmermeyer apologized for short time period with some of the rules getting out to Council.

Proposed rules for the 2007 legislative session are as follows:

**60CSR5 – Antidegradation Implementation Procedures**

**SUMMARY**

Antidegradation is a requirement of the federal Clean Water Act intended to preserve the existing quality of the State's waters and to prevent and/or minimize future degradation. The rule was first adopted in 2001 and establishes four levels, or tiers, of protection of State waters, Tiers 1,2,2.5 and 3. Each tier provides a graduated level of protection used during the NPDES permit issuance process.

**COMMENTS**

Secretary Timmermeyer - Procedural History – 444 Streams to 303 - 3.7% of total WV stream miles.

5.6.d. Are these absolute values (§5.6.d 1-4 of rule)?

*Yes*

Will there be another comment period after filing with Secretary of State's Office?

*Yes*

Is this the final list?

*Yes*

So §6.2 is gone?

*Yes*

Legislature has to approve the Tier 2.5 list according to the law passed last session.

How do we appeal a stream's inclusion on Tier 2.5 list?

*9.6 – Not appealable to the board, delisting a stream would require a change by the legislature through a rule change.*

Since rulemaking authority has been taken from EQB how do you appeal?

*This is like any other rule, EQB has no appellate jurisdiction.*

When does it go into effect?

*If the Legislature passes the list, we send it to EPA for approval, then it would be effective for reissuance, modifications, and 1<sup>st</sup> time issuances.*

## **47CSR2 – Requirements Governing Water Quality Standards**

### **SUMMARY**

This rule establishes requirements governing surface water quality standards for the waters of the State and establishes standards of purity and quality consistent with public health and the enjoyment thereof, the protection of animal, aquatic and plant life and the expansion of employment opportunities, agricultural expansion and a foundation for healthy industrial development.

### **COMMENTS**

Secretary Timmermeyer – Overview of nutrients criteria, EPA approved old (46CSR1) Aluminum Standard. Also includes updated list of trout waters.

How were trout streams added?

*We relied on DNR's data to come up with the list.*

Was it a scientific study or did it include streams where trout are stocked?

*The stream must be able to allow trout to survive over time. This does sometimes include stocked streams.*

Has problem with some streams listed, believes they are not reproducing streams, simply stocked, wants to see method of gathering data for list

*The list is not final, DEP will continue to regulate facilities on such streams. DEP will add and subtract streams as data becomes available.*

*6 streams are being taken off in this rule because they cannot support trout over time.*

How recent are DNR's survey's?

*The surveys range from 1975 to present.*

*We have to maintain waters that "previously sustained trout."*

Where is Watershed at in definition?

*When permits are issued they are looked at on a case by case basis to assess impact on downstream waters within a watershed (downstream usage protection.)*

*There is no definition of "water body" in State Code, only "Waters."*

### **33CSR9 - Standards for Beneficial Use of Filtrate From Water Treatment Plants**

#### **SUMMARY**

This legislative rule establishes a mechanism and requirements for the certification, permitting, siting, bonding, and use of water treatment plant sludge from water treatment plants that has beneficial properties. This rule applies to the beneficial use of water treatment plant sludge and to any person who seeks approval from the Secretary to beneficially use such sludge within the state. This rule is intended to enhance the resource recovery and recycling goals of article fifteen of chapter twenty-two of the West Virginia Code and to encourage the beneficial use of water treatment plant filtrate. Section 22-15-23 of the West Virginia Code and this rule, and not the provisions of W. Va. Code § 22-15-10 or 33 CSR 1, shall govern the beneficial use of water treatment plant sludge. This rule does not apply to sewage sludge, products derived from sewage sludge, sludges regulated under 33 CSR 8, or materials regulated as hazardous waste under W. Va. Code §§22-18-1, et seq.

#### **COMMENTS**

Can we give an example?

*Such filtrate could have been considered Hazardous Waste in the past, this rule allows for certain applications.*

### **47CSR5A – Rules for Individual State Certification of Activities requiring a Federal Permit**

#### **SUMMARY**

The proposed amendments to this rule are being made to adopt into rule requirements that have been applied through past practices for coal related activities requiring mitigation and issuance of a 401 State Certification of a 404 Permit. Ratios for monetary compensation for temporary impacts are detailed. Monetary compensation for permanent impacts to wetlands

from coal related activities are made the same as non-coal related. Additional economic and stream measurement information is being requested to be added to the 401 application.

## **COMMENT**

Does this apply to any other industry?

*No, it is only coal related.*

Wants to know if other industry has similar regs?

Seems contrary to what we submit to Army Corp. We want consistency across all forums. Is this different?

*No, it is information contained in other forms.*

4.2.f.a WV. Jobs creation

*Coal companies are already submitting this information to Coal Development. We use this information so we need to see it too.*

Is it on a timeframe? – Can coal meet with DEP?

Secretary Timmermeyer suggested we have another Advisory Council Meeting to give the council additional time to review certain rules.

Bill Raney agrees with Secretary Timmermeyer for the need for another meeting to address some of the rules.

The next Advisory Council Meeting will be scheduled before June 20, 2006.

## **58CSR5 – Recycling Assistance Grant Program**

### **SUMMARY**

Updates and streamlines recycling grant requirements. Establishes rule definitions. Consolidates the type of grants available. Simplifies the grant eligibility criteria. Clarifies uses of grant funding. Clarifies and restructures general conditions and requirements for an applicant and then for a grant recipient. Increases the maximum grant funding levels. Clarifies grant proposal content and submission requirements. Establishes agency review criteria and revises Recycling Assistance Fund Grant Review Committee.

### **COMMENT**

Someone worked really hard on putting this together - Really thinks they did a great job.

*The changes are a result of suggestions from grant recipients and the recycling community in general.*

## **45CSR6 – Control of Air Pollution from Combustion of Refuse**

### **SUMMARY**

This rule establishes emission standards for particulate matter and requirements for activities involving incineration of refuse which are not subject to, or are exempted from regulation under various federal counterpart regulations for specific combustion source categories. This rule also prohibits (with limited exception) open burning and sets forth the registration, permitting, reporting, testing, emergency, natural disaster and exemption provisions for activities involving the combustion of refuse and land clearing debris.

### **COMMENT**

Rule is just reorganizing and streamlining.

Wholesale look at air rules. Four decades old rule. Needed to take a look at its federal counterparts. We separated them (fed) into Rule 18. Rule 6 covers state regs. Streamlined. Did not change any limits. Left open burning and DOH jobs the same.

Both rules compared old “prevent and control” new “control” why drop the term “prevent” from the rule?

*We don't prevent air pollution we control it. There is no other specific reason, DEP just cleaned up the title.*

*The federal government doesn't use the term “prevent” and we are trying to mirror their rules for consistency.*

Does it involve timbering operations?

*No.*

## **60CSR3 – Voluntary Remediation and Redevelopment Rule**

### **SUMMARY**

The Voluntary Remediation Program proposed rule amendments focus on two primary areas: 1. Incorporating the Uniform Environmental Covenant Act provisions, and 2. Updating the DeMinimis Standard to incorporate recent changes in toxicological profiles posted by EPA for several constituents.

## **COMMENT**

We're adopting Uniform Environmental Covenant Act. We'll have to adopt as they change. Same for DeMinimus Standards (developed by consultant in excel). We've updated the tox profiles.

No questions from Council.

### **45CSR25 – Control of Air Pollution from Hazardous Waste Treatment Storage and Disposal Facilities.**

#### **SUMMARY**

This rule establishes and adopts emission standards for the treatment, storage and disposal of hazardous waste promulgated by the United States Environmental Protection Agency (U.S. EPA) pursuant to the Resource Conservation and Recovery Act, as amended (RCRA). This rule codifies general procedures and criteria to implement emission standards set forth in 40 CFR Parts 260, 261, 262, 264, 265, 266, 270 and 279, as listed in Table 25-A of the rule. The rule also adopts associated appendices, reference methods, performance specifications and other test methods which are appended to these standards. Any person who constructs, reconstructs, modifies or operates any hazardous waste treatment, storage, or disposal facility must comply with the West Virginia Hazardous Waste Management System, the codified federal emission standards, and this rule.

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

This revised rule incorporates by reference the following provisions of 40 CFR Parts 260, 261, 264, 265, 266 and 270 promulgated as of June 1, 2006: National Emission Standards for Hazardous Air Pollutants: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (Phase I Final Replacement Standards and Phase II), Resource Conservation and Recovery Act Burden Reduction Initiative, and Waste Management System; Testing and Monitoring Activities, Methods Innovation Rule and SW-846 Final Update IIIB.

## **COMMENT**

Revisions to this rule are necessary to maintain consistency with current federal regulations.

Only federal changes this year except for one definition on pathological incinerators.

No further questions.

### **199CSR1 – Surface Mining Blasting Rule**

#### **SUMMARY**

These changes are proposed for clarification of definitions, jurisdiction for underground shaft and slope development, and training/educational requirements for pre-blast surveyors and certified blasters. None of which should have any fiscal impact on the state or public above those currently experiencing. Some additional training will be required by those doing pre-blast surveys, but that training will be offered for free by Explosives and Blasting.

## COMMENT

Randy Huffman hit on highlight changes and cleanup for this rule:

- 3.2.c. 1000 ft requirement for seismograph
- 3.4. defines where DEP gives up regulatory authority as 40ft.
- 3.9 Pre blast surveyors training requirements.

Is this new or modified requirement?

*Modified – Now requiring additional criteria. DEP/OEB is the approving authority. We offer procedural training only at DEP 4.1.b. Case by case certification for qualifying experience for initial certification.*

Would that include the convicted felon requirements?

*The convicted felon exclusion remains. Felons can't get a fire marshal's license, or a license from ATF.*

Any provision for appeals on the convicted felon prohibition?

*Not at this time.*

4.5.d – Show cause why you should be allowed in West Virginia when suspended or revoked in other states.

4.9. – Allows blasting inspector to issue suspension order on site if unsafe conditions exist. 24 hour appeal process. Concerned about air blast and fly rock incidents.

Grammatical errors must be changed before we go out to public notice.

Concerns: New definition for “Other structures” and “habitable dwelling”  
Shaft and slope (40 ft)

*Other structures or “Protective structure” can house people – habitable dwelling one that can house people (snowbird example)- “shaft and slope” DEP worked with miner's health and safety to develop the distance criteria.*

We're (WVCA) probably fine with them.

Does OSM require it?

*No. Geology and blast record 3.5 Safety concerns pre-blast surveyors, they don't have to be geologists, but they do need to know what they are blasting.*

## **HOLD OVER FOR NEXT MEETING.**

### **38CSR2 – Surface Mining Reclamation Rule**

#### **SUMMARY**

38- 3.2.g. Notice of Technical Completeness is new language and is to provide the public an opportunity to review the application once technical review is completed. §38- 5.4.e.1 is removing language that is contrary to returning the natural drainway to its original pattern, profile, and dimensions once drainage control structure is removed. Changes to §38-2-6 removes duplication of rules for Blasting and after this change, all the requirements for blasting will be contained in Surface Mining Blasting Rule, Title 199 Series 1. Changes in §38-14.15.c.2, 14.15.d.1 and 14.15.d.3 are clarifying contemporaneous reclamation rules on excess spoil disposal. The changes in §38- 5.6 and 14.15 removes phase-in compliance schedules and the schedule in 14.15 has long past and the one in 5.6 is due to expire on June 19, 2006. §38-2-25 Coal Slurry Lines is new language and the term slurry as used in this subsection means any mixture of water and solids that are pumped to a disposal area. The purpose of this change is to minimize the potential and the impacts of slurry line spills by providing for secondary containment, monitoring etc.

#### **COMMENT**

Creates standards and requirements (§38-2-25) is a new section.

Public review period 3.2.g. – currently the public has no opportunity to comment on a completed application so this rule adds a 15 day comment period in certain circumstances.

Why delete the term “databases” specifically

*Some of those databases don't exist. We have our own database now.*

Has the current notification timeframe changed?

*No, it is the same as using the existing spill line.*

What about mining related spills?

*Inspectors call spill line within 24 hour period. Companies should call immediately upon discovering a spill.*

Is there anyway to sample water for slurry spills?

*Currently DEP Inspectors take stream water samples and that data is on file.*

Is there anything dangerous in the slurry to the public?

*Not usually. We can get you data on existing samples.*

Dialysis system are bothered by trace stuff in the water.

*Coal fines are usually what kill fish, not the trace chemicals.*

## **HOLD OVER FOR NEXT AC MEETING**

### **47CSR30 – WV/NPDES RULES FOR COAL MINING FACILITIES**

#### **SUMMARY**

The proposed amendments to this rule are being made to allow general clean-up of sections referencing outdated names of agencies and references to the EQB governing rule making. This rule addresses the Secretary as being the person as head of all actions. References to the “Director” are changed to “Secretary” to eliminate the need to distinguish between the Director of Mining and Reclamation and the Director of Water and Waste Management when issuing a coal related WV/NPDES permit. This rule adds provision for storm-water coverage for certain minimal activities without the requirement for modification through application to the permit. This rule also provides for an advanced approval of transfer of a WV/NPDES Permit to coincide with the advanced approval of the corresponding Article 3 Permit.

#### **COMMENT**

Eliminates need to do a NPDES modification permit in certain instances when adding area to an existing permitted area. Reduce paperwork and manpower.

Secretary can override rule when circumstances dictate. Also, there is a provision for advanced approval of a transfer permit in certain circumstances. Consistent with SMCRA.

Why would a permit area be expanded if not to extract minerals?

*Haul roads, storage, etc.*

Does this do away with any existing public comment period?

*No. These small changes wouldn't require a hearing.*

## **HOLD FOR NEXT MEETING.**

### **35CSR3 – Coalbed Methane Wells Rule –**

## **HOLD FOR NEXT MEETING**

## **33CSR20 – Hazardous Waste Management**

### **HOLD FOR NEXT MEETING**

## **45CSR8 – Ambient Air Quality Standards**

### **SUMMARY**

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.

The Division of Air Quality (DAQ) is streamlining the regulatory structure by consolidating all of the NAAQS into one rule. Consequently, this rule will repeal and replace 45CSR9 - "Ambient Air Quality Standards for Carbon Monoxide and Ozone" which was filed on April 16, 2002 and became effective on July 1, 2002, and 45CSR12 - "Ambient Air Quality Standard for Nitrogen Dioxide" which was filed May 19, 2000, and became effective June 1, 2000.

### **COMMENT**

This puts all NAAQS in one rule, acts to consolidate and streamline the rule.

Why do away with 2.2?

*It's now in 3.1 and adopts federal standards.*

Particulates are in this rule. Dr. Popper's (WVU) research shows that particulates damage kid's lungs developmentally and these standards are based on adults. Asthma on the increase and this might exacerbate our kids health.

*The federal EPA is currently reviewing fine particulate matter and we will change our standards accordingly based on their rule changes.*

## **45CSR16 – Standards of Performance for New Stationary Sources**

### **SUMMARY**

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

This revised rule incorporates by reference the following new or revised NSPS standards promulgated as of June 1, 2006: Standards of Performance for: New and Existing Stationary Sources - Electric Utility Steam Generating Units; Electric Utility Steam Generating Units for Which Construction Is Commenced After September 18, 1978, Industrial- Commercial- Institutional Steam Generating Units, Small Industrial- Commercial- Institutional Steam Generating Units; Stationary Gas Turbines.

#### **COMMENT**

Standard Update of fed requirements.

No Questions.

#### **45CSR34 – Emission Standards for Hazardous Air Pollutants**

#### **SUMMARY**

This rule establishes and adopts national emission standards for hazardous air pollutants (NESHAP) and other regulatory requirements promulgated by the United States Environmental Protection Agency (U.S. EPA) pursuant to section 112 of the federal Clean Air Act, as amended (CAA). This rule codifies general procedures and criteria to implement emission standards for stationary sources that emit, or have the potential to emit, one or more of the hazardous air pollutants set forth in section 112(b) of the CAA, or one or more of the eight substances listed as hazardous air pollutants in 40 CFR §61.01(a). The rule incorporates by reference the NESHAP standards of 40 CFR Parts 61, 63 and 40 CFR Part 65 (Consolidated Federal Air Rule), to the extent referenced in 40 CFR Parts 61 and 63, promulgated as of June 1, 2006. The rule also adopts associated appendices, reference methods, performance specifications and other test methods which are appended to these standards and contained in 40 CFR Parts 61 and 63. Any person who constructs, reconstructs, modifies or operates any source subject to the provisions of 40 CFR Parts 61 or 63 must comply with the applicable NESHAPS and this rule.

This rule will repeal and replace 45CSR15 “Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 61” filed April 28, 2006 and effective June 1, 2006, as 45CSR34 will now include all federal NESHAPS under 40 CFR Parts 61 and 63.

The revised rule incorporates by reference the following new or revised NESHAP standards promulgated as of June 1, 2006: Miscellaneous Organic Chemical Manufacturing, Waste Management System; Testing and Monitoring Activities, Methods Innovation Rule and SW-846 Final Update IIIB, Cellulose Products Manufacturing, Primary Aluminum Reduction Plants, Cross-Media Electronic Reporting, Hazardous Waste Combustors (Phase I Final Replacement Standards and Phase II), Requirements for Control Technology Determinations for Major Sources in Accordance With Clean Air Act Sections, Sections 112(g) and 112(j), Primary Copper Smelting, Coke Ovens: Pushing, Quenching, and Battery Stacks, Cellulose Products Manufacturing, Miscellaneous Organic Chemical Manufacturing, Secondary Aluminum Production, Brick and Structural Clay Products Manufacturing, Hazardous Waste Combustors, Exemption of Certain Area Sources From Title V Operating Permit Programs, List of Hazardous Air Pollutants, Petition Process, Lesser Quantity Designations, Source Category List, Miscellaneous Coating Manufacturing, Industrial, Commercial, and Institutional Boilers and Process Heaters: Reconsideration, Surface Coating of Metal Cans, Refractory Products Manufacturing, Plywood and Composite Wood Products; List of Hazardous Air Pollutants, Lesser Quantity Designations, Source Category List, Miscellaneous Organic Chemical Manufacturing, Hazardous Waste Combustors, Hydrochloric Acid Production, Industrial Process Cooling Towers, Magnetic Tape Manufacturing Operations, Ethylene Oxide Emissions Standards for Sterilization Facilities, Refractory Products Manufacturing and General Provisions.

#### **COMMENT**

Standard update of fed requirements combining 45CSR\_\_\_ and 45CSR16 into this rule. Will replace Rule 15.

No Questions.

#### **45CSR39 – Control of Annual Nitrogen Oxides Emissions**

#### **SUMMARY**

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

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

known to be highly cost effective for electric generating units. Flexibility is built in through market-based “cap and trade” provisions which allow sources to buy or sell NO<sub>x</sub> emission allowances from or to other program participants. Reducing upwind NO<sub>x</sub> emissions will assist downwind PM<sub>2.5</sub> and 8-hour ozone nonattainment areas in achieving the National Ambient Air Quality Standards (NAAQS).

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

## COMMENT

Standard update of Fed requirements.

CAIR rules

Picking up EPA rules

Are all the cross-outs just picking up federal standards?

*Yes.*

No other questions.

## 45CSR40 – Control of Ozone Season Nitrogen Oxides Emissions

### SUMMARY

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

This rule partially fulfills the State’s obligations in response to the United States Environmental Protection Agency’s (U.S. EPA) final rule, *Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO<sub>x</sub> SIP Call* (12 May 2005, at FR 25162). The federal rule requires that large emitters of NO<sub>x</sub> reduce ozone season emissions through the constraint of set budgets. U.S. EPA is specifying that ozone season NO<sub>x</sub> emission reductions be implemented in two phases. The first phase of ozone season NO<sub>x</sub> reductions starts in 2009; the second phase starts in 2015, and continues thereafter. The NO<sub>x</sub> emission reduction requirements are based on controls that are known to be highly cost effective for electric generating units and large industrial boilers. Flexibility is built in through market-based “cap and trade” provisions which allow sources to buy or sell NO<sub>x</sub> emission allowances from or to other program participants. Reducing upwind ozone season NO<sub>x</sub> emissions will assist downwind 8-hour ozone nonattainment areas in achieving the National Ambient Air Quality Standards (NAAQS).

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

effectively “sunset” these rules, meeting the approvability requirement for implementing CAIR.

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

#### **COMMENT**

These changes have they resulted in any change in stringency?

*No we are simply streamlining the CAIR rules*

We haven't lost any ground?

*No.*

#### **45CSR1 – Control of Annual Sulfur Dioxide Emissions**

##### **SUMMARY**

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

This rule partially fulfills the State's obligations in response to the United States Environmental Protection Agency's (U.S. EPA) final rule, *Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO<sub>x</sub> SIP Call* (12 May 2005, at FR 25162). The federal rule requires that large emitters of SO<sub>2</sub> reduce annual emissions based upon the implementation of retirement ratios for SO<sub>2</sub> allowances allocated under the Acid Rain Program. U.S. EPA is specifying that annual SO<sub>2</sub> emission reductions be implemented in two phases. The first phase of SO<sub>2</sub> reductions starts in 2010 and requires retiring SO<sub>2</sub> allowances at a 2:1 ratio; the second phase starts in 2015 and requires retiring SO<sub>2</sub> allowances at a 2.86:1 ratio, and continues thereafter. The SO<sub>2</sub> emissions reductions requirements are based on

controls that are known to be highly cost effective for electric generating units. Flexibility is built in through market-based “cap and trade” provisions which allow sources to buy or sell SO<sub>2</sub> emission allowances from or to other program participants. Reducing upwind SO<sub>2</sub> emissions will assist downwind PM<sub>2.5</sub> and 8-hour ozone nonattainment areas in achieving the National Ambient Air Quality Standards (NAAQS).

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

#### **COMMENT**

No questions.

#### **OTHER BUSINESS**

Appreciation to Trish White for her work on these rules.

Larry Harris wanted to know about Pocohantas Water Treatment Plant Status? Randy Huffman located Cliff Whyte from DWWM to give him the information.

Trish White will e-mail everyone with next meeting date....

Larry Harris moves we adjourn – Bill Raney seconds.

**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                 | 2007<br>Increase/Decrease<br>(use "-") | 2008<br>Increase/Decrease<br>(use "-") | Fiscal Year<br>(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: June 5, 2006

Signature of Agency Head or Authorized Representative

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

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

SERIES 8  
AMBIENT AIR QUALITY STANDARDS FOR SULFUR OXIDES  
AND PARTICULATE MATTER

FILED

2006 JUN -7 P 4: 35

OFFICE WEST VIRGINIA  
SECRETARY OF STATE**§45-8-1. General.**

1.1. Scope. -- ~~The purpose of this rule is to establish~~ This rule establishes ambient air quality standards in West Virginia for sulfur oxides, and particulate matter, carbon monoxide, ozone, nitrogen dioxide and lead, equivalent to those the national primary and secondary ambient air quality standards established by the U.S. EPA 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 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 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 of the U.S. EPA deems necessary to protect the public health and welfare.

1.2. Authority. -- W.Va. Code §22-5-1 et seq. §22-5-4.

1.3. Filing Date. -- April 16, 2002.

1.4. Effective Date. -- July 1, 2002.

1.5. Repeal of former rules. -- This rule shall repeal and replace 45CSR9 - "Ambient Air Quality Standards for Carbon Monoxide and Ozone" which was filed on April 16, 2002 and became

effective on July 1, 2002, and 45CSR12 - "Ambient Air Quality Standard for Nitrogen Dioxide" which was filed May 19, 2000, and became effective June 1, 2000.

1.5.1.6. Former Rules. -- This legislative rule amends 45CSR8 - "Ambient Air Quality Standards for Sulfur Oxides and Particulate Matter" which was filed on May 19, 2000 April 16, 2002 and became effective on June 1, 2000 July 1, 2002.

**§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:

~~§45-8-3~~ **§45-8-2. Definitions.**

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

~~3.1.~~ 2.2. "Air Pollutants" means solids, liquids, or gases which, if discharged into the air, may result in a statutory air pollution.

~~3.2.~~ 2.3. "Air Pollution"; or 'statutory air pollution', shall have the meaning ascribed to it in W.Va. Code §22-5-2.

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

~~3.3.~~ 2.5. "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.

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

2.7. "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.

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

~~3.4.~~ 2.9. "Particulate Matter" means any material, except uncombined water, that exists in a finely divided form as a liquid or solid.

2.10. "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.

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

~~3.5.~~ 2.12. "PM<sub>10</sub>" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers.

2.13. "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.

~~3.6.~~ 2.14. "Secretary" means the secretary of the department of environmental protection Secretary of the Department of Environmental Protection or such other person to whom the secretary Secretary has delegated authority or duties pursuant to W.Va. Code §§22-1-6 or 22-1-8.

2.15. 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.

**§45-8-3. Anti-Degradation.**

3.1. 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.

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

4.1. The Standards for Sulfur Oxides. -- No person shall allow emissions of sulfur oxides to the ambient air in any concentration which exceeds the following primary and secondary ambient air quality standards shall not be exceeded:

## 4.1.a. Sulfur Dioxide

~~4.1.a.1. Primary Standard~~

~~4.1.a.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 (0.003 parts per million) ( $\mu\text{g}/\text{m}^3$ ), 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.a.1.B: 4.1.b. Maximum 24-Hour Concentration. -- The level of the 24-hour primary standard for sulfur oxides is 0.14 ppm (365 micrograms per cubic meter (0.14 ppm) =  $\mu\text{g}/\text{m}^3$ ), 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.a.2. Secondary Standard~~

~~4.1.a.2.A: 4.1.d. Maximum Three (3) Hour Concentration. -- The level of the 3-hour secondary standard for sulfur oxides is 0.5 ppm, (1300 micrograms per cubic meter (0.5 ppm) =  $\mu\text{g}/\text{m}^3$ ), 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.

~~4.1.b. Particulate Matter Primary and Secondary Standards~~~~4.1.b.1.  $\text{PM}_{10}$~~ 

4.2. Standards for Particulate Matter. -- No person shall allow emissions of particulate matter to the ambient air in any concentration which exceeds the following primary and secondary ambient air quality standards:

~~4.1.b.1.A: 4.2.a.  $\text{PM}_{10}$  Maximum Annual Arithmetic Mean Concentration. -- The level of the primary and secondary annual standards for  $\text{PM}_{10}$  is 50 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ )  $\mu\text{g}/\text{m}^3$ . The standards are attained where when the expected annual arithmetic mean concentration, in accordance with Appendix K of 40 CFR Part 50, is less than or equal to 50  $\mu\text{g}/\text{m}^3$ .~~

~~4.1.b.1.B: 4.2.b.  $\text{PM}_{10}$  Maximum~~

24-Hour Average Concentration. -- The level of the primary and secondary 24-hour standards for PM<sub>10</sub> is 150 micrograms per cubic meter (150  $\mu\text{g}/\text{m}^3$ )  $\mu\text{g}/\text{m}^3$ . 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.c. PM<sub>2.5</sub> Maximum Annual Arithmetic Mean Concentration. -- The level of the annual primary and secondary standards for PM<sub>2.5</sub> 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.d. PM<sub>2.5</sub> Maximum 24-Hour Average Concentration. -- The level of the 24-hour primary and secondary standards for PM<sub>2.5</sub> are 65  $\mu\text{g}/\text{m}^3$ . 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 65  $\mu\text{g}/\text{m}^3$ .

4.3. Standards for Carbon Monoxide. -- No person shall allow emissions of carbon monoxide to the ambient air in any concentration which exceeds 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  $\mu\text{g}/\text{m}^3$ , 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  $\mu\text{g}/\text{m}^3$ ), 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 concentration which exceeds 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 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 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 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 ppm, as determined in accordance with Appendix I 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 concentration which exceeds the following primary and secondary ambient air quality standards:

4.7.a. Maximum Annual Arithmetic Mean Concentration. -- The level of the annual primary and secondary standards for nitrogen dioxide is 0.053 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 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. Standards for Lead. -- No person shall allow emissions of lead and its compounds, measured as elemental lead, to the ambient air in any concentration which exceeds the following primary and secondary ambient air quality standards:

4.8.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.  $\text{PM}_{10}$  concentrations For the purpose of determining attainment of the primary and secondary  $\text{PM}_{10}$  standards under subdivisions 4.2.a and 4.2.b, particulate matter shall be measured in the ambient air as particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers  $\text{PM}_{10}$  by:

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

5.2. Sulfur dioxide concentrations 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. a The reference method based on described in Appendix A of 40 CFR Part 50 and designated in accordance with 40 CFR Part 53; or

5.2.b. an 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.c and 4.2.d, 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.c and 4.2.d 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.c and 4.2.d 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.

#### **§45-8-6. §45-8-7. Inconsistency Between Rules.**

6.1. 7.1. In the event of any inconsistency between this rule and any other rule of the Secretary, the resolution of West Virginia Department of Environmental Protection, such 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.