

**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: West Virginia Department of Environmental Protection - Division of Air Quality TITLE NUMBER: 45

CITE AUTHORITY: WV Code §22-5-4

AMENDMENT TO AN EXISTING RULE: YES X 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:     

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

**WEST VIRGINIA  
SECRETARY OF STATE**

Betty Ireland

**ADMINISTRATIVE LAW DIVISION**

Form #1

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FILED

2007 JUN -6 PM 4:24

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

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

AGENCY: WV Department 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: July 9, 2007 TIME: 6:00 p.m.

LOCATION OF PUBLIC HEARING: West Virginia Department of Environmental Protection  
Dolly Sods Conference Room  
601 57th Street, SE  
Charleston, WV 25304

COMMENTS LIMITED TO: ORAL  WRITTEN  BOTH

DATE WRITTEN COMMENT PERIOD ENDS: July 9, 2007 TIME: 6:00 p.m.

WRITTEN COMMENTS MAY BE MAILED TO:

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.

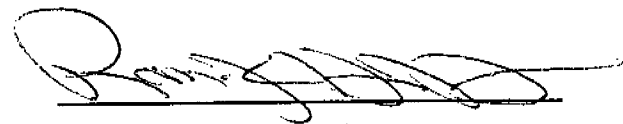
Public Information Office  
Department of Environmental Protection  
601 57th Street, SE  
Charleston, WV 25304

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

Review Committee

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

JUN - 6 2007



Authorized Signature

Legislative Rule-Making

**QUESTIONNAIRE**

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

DATE: July 26, 2007

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

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

LEGISLATIVE RULE TITLE: 45CSR8 - Ambient Air Quality Standards for Sulfur Oxides  
and Particulate Matter

1. Authorizing statute(s) citation W.Va. Code §22-5-4

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:  
June 6, 2007

b. What other notice, including advertising, did you give of the hearing?  
Published notice on June 9th in The Charleston Daily Mail and The Charleston Gazette. Posted  
on the Department of Environmental Protection's web site under "Calendar of Events".

c. Date of Public Hearing(s) or Public Comment Period ended:  
July 9, 2007

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

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

July 26, 2007

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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

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

Phone: 304 926-0499

Phone: 304 926-0499

Fax: 304 926-0488

Fax: 304 926-0488

e-mail: jbenedict@wvdep.org

e-mail: tmowrer@wvdep.org

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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)

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

Phone: 304 926-0499 ext. 1200

Fax: 304 926-0479

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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 \_\_\_\_\_

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

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

d. Attach findings and determinations and reasons:

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

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

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**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.

**Briefing Document**

**45CSR8**

**Page 2**

Because 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:**

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 May 21, 2007, and May 30, 2007 meetings, 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**

Monday – May 21, 2007

~~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:**

Rick Roberts  
Karen Price  
Bill Raney  
Lisa Dooley  
Larry Harris  
Jackie Hallinan

**DEP:**

Randy Huffman, Deputy Cabinet Secretary/Director – Division of Mining & Reclamation  
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  
Lewis Halstead, DMR  
Ken Politan, DMR  
Charlie Sturey, DMR  
Jessica Greathouse, Chief Communication Officer – WVDEP – Public Information Office  
James Martin, Chief, Office of Oil & Gas  
Carroll Cather, DWWM  
Pam Nixon, Advocate  
David L. Vande Linde, Blasting  
Jim Mason, DAQ  
Mike Zeto, DWWM – EE  
Matt Sweeney, DWWM

**VISITORS:**

Ann Bradley, Spilman Thomas & Battle  
Charlie Burd, IOGA  
Don Garvin, WVEC  
Dave Yaussy, Robinson & McElwee

Randy Huffman, Deputy Cabinet Secretary - West Virginia Department of Environmental Protection called the meeting to order at 1:00 p.m.

Karen Price stated that the Council did not have enough time to review the rules, therefore was requesting to have another meeting to discuss further and the remaining of the Council agreed. The Council will meet May 30, 2007 at 10:00 a.m. – WVDEP – 601 57<sup>th</sup> Street, SE – Charleston, WV 25304 – West Virginia Room (3001).

Deputy Cabinet Secretary Huffman apologized for the short time period regarding the rules getting out to Council. Randy Huffman then introduced Karen Watson, Assistant General Counsel to discuss with the Council the DEP bills that had passed in the 2007 Regular Legislative Session:

- SB 337 – Establishing New Greenhouse Gas Inventory Program  
Approved by Governor – April 4, 2007
- SB 425 – Relating to Water Pollution Control Revolving Fund  
Approved by Governor – April 4, 2007
- SB 465 – Establishing Dam Safety Rehabilitation Revolving Fund  
Approved by Governor – March 27, 2007
- SB 490 – Relating to Underground Storage Tank Insurance Fund  
Approved by Governor – April 3, 2007
- SB 524 – Requiring Proof of Lawful Disposal of Solid Waste  
Approved by Governor – March 28, 2007
- SB 588 – Removing Tax Expiration Date on Manufacturing or Production of Synthetic Fuel From Coal  
Approved by Governor – April 4, 2007

Karen Watson then gave a brief summary of each proposed rule for the 2008 legislative session:

### Air Quality

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

#### **SUMMARY**

Proposed Rule 6 is now a basic open burning/ incinerator rule. Revised scope includes ‘statutory air pollution,’ addition of new language for posted operating instructions and open burning or incineration of animal or poultry carcasses during a declared state of emergency. Except for temporary Air Curtain Incinerators for land clearing debris (DOH jobs) and incineration of animal or poultry remains, most Air Curtain Incinerators will now be exempted under Rule 6 and placed under Rule 18.

#### **COMMENT**

Mr. Harris: Why does it allow low-level radioactive waste?

*DEP Response: To allow crematories to dispose of bodies with chemo drugs. Does not allow high-level radioactive compounds related to research.*

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Council wanted to know if the agency would accept comments in writing after the meeting (e-mail in comments)

*DEP Response: Yes*

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

### **SUMMARY**

NAAQS rules 45CSR8, 45CSR9 & 45CSR12 have been combined for the 2008 legislative session. Rule 8 is now the complete NAAQS incorporation by reference rule, and 45CSR9 & 45CSR12 will be repealed and replaced. Revisions to SO<sub>2</sub> & PM NAAQS include correction of SO<sub>2</sub> annual primary standard from 0.003 to 0.030 ppm, addition of annual and 24-hour PM<sub>2.5</sub> standards, and addition of measurement methods for PM<sub>2.5</sub>. Revisions to CO & Ozone NAAQS include revocation of one-hour ozone standard except for Berkeley & Jefferson counties, identification of one-hour ozone maintenance areas, and addition of 8-hour primary and secondary ozone standards. Revisions to NO<sub>2</sub> and Lead NAAQS include addition of primary and secondary standards for lead, and addition of measurement methods for lead. Revisions also include general language updates, improved citing and consistency.

### **COMMENT**

Mr. Harris: Are we sure we are protecting the public's health? We should not be lowering standards so that our energy being transmitted to other states doesn't pollute our air. Are we aware of EPA's Science Advisory Panel?

*DEP Response: CAIR aims to lower emissions at power plants. Utility controls are helping us meet targets earlier. EPA's regional approach has generally been successful and we are seeing tremendous benefits. The agency is aware of the EPA's panel, and EPA is considering more stringent regulations but has not done so yet.*

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

### **SUMMARY**

Revisions to rule incorporate annual incorporation by reference updates and exclusions.

### **COMMENT**

*No questions.*

## **45CSR18 – Control of Air Pollution from Combustion of Solid Waste**

### **SUMMARY**

CISWI Rule 18 combines and incorporates by reference all current federal Section 111/129 combustion regulation into one rule. Old Rule 24 will be repealed and replaced. New exemption section is consistent with revised Rules 6, 25 and 34. Revisions also include revised scope, extensive federal counterpart language updates, improved citing and consistency.

### **COMMENT**

*No questions.*

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

### **SUMMARY**

Revisions to the proposed rule include general annual incorporation by reference and revisions required to maintain consistency with the DWWM's rule 33CSR20 and federal counterpart regulation. Addition of direct incorporation by reference of new provisions published in the Federal Register. Language for pathological waste incinerators is revised for clarity.

### **COMMENT**

No questions.

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

### **SUMMARY**

Rule 34 now combines all NESHAP regulations previously adopted under both Rules 15 & 34. Old Rule 15 will be repealed and replaced. Revisions to Rule 34 incorporate annual NESHAP updates under Parts 61 & 63. Some Part 63 standards affecting non-major sources of hazardous air pollutants are being excluded from incorporation by reference: Oil and Natural Gas; Polyvinyl Chloride and Copolymers; Primary Copper Smelting; Secondary Copper Smelting; and Primary Nonferrous Metals.

### **COMMENT**

No questions.

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

### **SUMMARY**

Annual CAIR NOx Rule - Incorporates revisions to 40 CFR Part 96.

## COMMENT

No questions.

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### **45CSR40 - Control of Ozone Season Nitrogen Oxides Emissions**

#### **SUMMARY**

Ozone Season CAIR NOx Rule - Incorporates revisions 40 CFR to Part 96.

#### **COMMENT**

No questions.

### **45CSR41 – Control of Annual Sulfur Dioxide Emissions**

#### **SUMMARY**

Annual CAIR SO<sub>2</sub> Rule - Incorporates revisions to 40 CFR Part 96.

#### **COMMENT**

No questions.

### **45CSR42 – Greenhouse Gas Emissions Inventory Program**

#### **SUMMARY**

The Greenhouse Gas Inventory Program Rule is authorized by SB337 passed in the 2007 legislative session. The rule establishes a program which requires the reporting and inventory of greenhouse gas emissions by stationary sources which emit more than a *de minimis* amount; inventories greenhouse gas emissions from stationary, area, mobile and biogenic sources, and accounts for reductions, capture and sequestration; provides for: a periodic compilation of a greenhouse gas inventory; a determination whether WV is a net sink or emitter; development of a registry for voluntary reductions; and a determination whether greenhouse gas can be developed as an asset for economic development.

#### **COMMENT**

Mr. Raney: Is the exclusion still there for coal preparation activities?

*DEP Response: Yes, section 3.2. (45CSR42)*

Mr. Raney: How do we quantify sequestration?

*DEP Response: Don't think we will get down to stationary source level. Agency will look at area*

*sources and biogenic activities. Once we get information, we will compile in an inventory.*

## **Division of Water and Waste Management**

### **33CSR9 – Standards for Beneficial use of Filtrate from Water Treatment Plants**

#### **SUMMARY**

This legislative rule establishes a mechanism and requirements for the 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.

#### **COMMENT**

Lisa Dooley: Public notice of permits – who bears the cost – there has to be a more efficient way of getting notices out than Class I legal ads. This is a suggestion for the future.

*DEP Response: Applicant bears cost – DEP is trying other methods of getting the information out – but not everyone has access to e-mail.*

*400 people on DEP's mailing list to receive permits by e-mail and we have between 30-40 who receive permits by US mail.*

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

#### **SUMMARY**

This amendment will adopt by reference approximately two years of changes to federal regulations by adopting the federal regulations in effect as of June 1, 2007 consisting of changes that correct errors in previously enacted Dye and Pigment rule and Manifest rule, allow more hazardous waste, allow greater flexibility in SW-846 testing and monitoring, allow more mercury containing devices to be managed as universal waste, streamline permitting process through a standardized permit, allow additional headworks and de minimus waste exemptions, reference Clean Air Act standards for hazardous waste combustors, allow a series of paperwork burden reductions for hazardous waste management facilities, corrects errors in 40 CFR (federal regulations) and excludes cathode ray tubes from the definition of solid waste under certain conditions. Language corrections, updated references and a change as the result of an EPA comment regarding annual groundwater monitoring at corrective action sites are also included in the amended rule. The rule amendment is not projected to require additional operating expenses above current levels as the amendments are generally de-regulatory in nature.

## COMMENT

No questions.

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### **33CSR30 – Underground Storage Tanks**

#### **SUMMARY**

There are several new provisions to reflect the 2005 Federal Energy Act, including: secondary containment requirements for new or replaced tanks or piping; secondary containment requirements for new or replaced fuel dispenser systems; tank eligibility for delivery, deposit or acceptance – enables agency to prevent deposit or delivery to a tank that is not in compliance; and training requirements for individuals who operate, maintain or are responsible to address emergencies from spills or releases from underground storage tank systems.

#### **COMMENT**

No questions.

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

#### **SUMMARY**

The proposed revisions reflect updates identified during the federally-mandated triennial review of the Water Quality Standards rule. These include proposed additions to the trout water list, new criteria for nutrients, revisions to criteria in Appendix E and a use redesignation in the Guyandotte River Basin.

#### **COMMENT**

Mr. Raney: Would like to have the trout water list stay within the agency and be able to discuss the science on a case-by-base basis before the EQB, not the Legislature.

*DEP Response: The DEP believes the scientific basis for the proposed trout streams is clear and does not need to be litigated before the EQB.*

Mr. Harris: Commented on the changes in Appendix E and asked whether the formula change for copper and cadmium resulted in a more or less stringent standard.

*DEP Response: The changes in Appendix E are recommended by EPA, updating MCL's, etc. The revised hardness formulas represent EPA's latest science.*

## **47CSR10 – National Pollutant Discharge Elimination System (NPDES)**

### **SUMMARY**

The proposed revisions to the National Pollutant Discharge Elimination System Rule reflect updates/additions made to the various federal regulations that govern the NPDES program. The proposed changes also include specific language in section 14 of the rule relating to the Pretreatment Program to ensure that the rule is consistent with the most recent federal pretreatment regulations in 40 CFR Part 403.

### **COMMENT**

*No questions.*

## **47CSR34 – Dam Safety**

### **SUMMARY**

The proposed revisions establish requirements governing the disbursement and use of moneys in the Dam Safety Rehabilitation Revolving Fund, authorized by SB 465 in the 2007 legislative session.

### **COMMENT**

Ms. Hallinan: Any progress being made in reducing the number of deficient dams?

*DEP Response: Not very much. The fund initiative is badly needed.*

## **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 for state waters, Tiers 1, 2, 2.5 and 3. Each tier provides a graduated level of protection used during the NPDES permit issuance process. The proposed revisions to the rule carry forward the agency's antidegradation implementation efforts, and move the Tier 2.5 streams that had been on the "presumptive" list in Appendix C to a final proposed list in Appendix A. The agency is proposing a total of 156 streams be included on the list. The list of 156 waters is comprised of the 37 waters that did not receive objections in the formal objection period, those waters that contain reproducing trout and are 100% on public land, those waters listed as high quality on public land based on their high biological scores, and Loop Creek.

### **COMMENT**

Mr. Harris: Suggested we file with 309 streams instead of 156 streams because Legislature will further reduce.

Jackie Hallinan: The program is a good idea.

Meeting was adjourned by Deputy Cabinet Secretary Randy Huffman.

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West Virginia Department of Environmental Protection

**ADVISORY COUNCIL MEETING MINUTES**

Wednesday – May 30, 2007

10:00 a.m. – 12:00 p.m.

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

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

**ATTENDEES:**

**Advisory Council Members:**

Rick Roberts  
Karen Price  
Bill Raney  
Larry Harris - Teleconference  
Jackie Hallinan

**DEP:**

Randy Huffman, Deputy Cabinet Secretary/Director – Division of Mining & Reclamation  
Karen G. Watson, Assistant General Counsel  
Lisa McClung, Director – Division of Water and Waste Management  
John Benedict, Director – Division of Air Quality  
Jessica Greathouse, Chief Communication Officer – WVDEP – Public Information Office  
Pam Nixon, Advocate  
Jim Mason, DAQ  
Mike Zeto, DWWM – EE  
John Morgan, DWWM  
Scott Mandirola, DWWM  
Greg Adolfson, PIO

**VISITORS:**

Dave Yaussy  
Brittany Carns  
Joe Gollehon  
Gregory Hoyer  
Jeff Mauzy  
Amy Christy

Randy Huffman, Deputy Cabinet Secretary - West Virginia Department of Environmental Protection called the meeting to order at 10:00 a.m. Advisory Council Member Larry Harris joined the meeting via teleconference. Deputy Cabinet Secretary Huffman then turned the meeting over to Karen Watson, Assistant General Counsel for the West Virginia Department of Environmental Protection. Karen informed the Council that the agency had received comments from several Council members and those comments would be appended to the minutes. (see attached) She explained the agency

had representatives from each of the programs to answer questions for the rules identified in those comments. She also explained the agency had made several changes in the rules as a result of those comments.

## Air Quality

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

#### **SUMMARY**

Proposed Rule 6 is now a basic open burning/ incinerator rule. Revised scope includes ‘statutory air pollution,’ addition of new language for posted operating instructions and open burning or incineration of animal or poultry carcasses during a declared state of emergency. Except for temporary Air Curtain Incinerators for land clearing debris (DOH jobs) and incineration of animal or poultry remains, most Air Curtain Incinerators will now be exempted under Rule 6 and placed under Rule 18.

#### **COMMENT**

Larry Harris: Had raised the issue of “low-level radioactive waste” in the last meeting.

*DEP Response: DEP has removed the chemotherapeutic waste and low-level radioactive waste provisions from the proposed rule. The proposed rule does not in any way affect current medical waste incineration rules now on the books.*

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

#### **SUMMARY**

NAAQS rules 45CSR8, 45CSR9 & 45CSR12 have been combined for the 2008 legislative session. Rule 8 is now the complete NAAQS incorporation by reference rule, and 45CSR9 & 45CSR12 will be repealed and replaced. Revisions to SO<sub>2</sub> & PM NAAQS include correction of SO<sub>2</sub> annual primary standard from 0.003 to 0.030 ppm, addition of annual and 24-hour PM<sub>2.5</sub> standards, and addition of measurement methods for PM<sub>2.5</sub>. Revisions to CO & Ozone NAAQS include revocation of one-hour ozone standard except for Berkeley & Jefferson counties, identification of one-hour ozone maintenance areas, and addition of 8-hour primary and secondary ozone standards. Revisions to NO<sub>2</sub> and Lead NAAQS include addition of primary and secondary standards for lead, and addition of measurement methods for lead. Revisions also include general language updates, improved citing and consistency.

#### **COMMENT**

Karen Price: Section 4.2.c – PM<sub>2.5</sub> Maximum 24-Hour Average Concentration. The level for the 24-hour primary and secondary standard states 35 ug/m<sup>3</sup>. This should be 65 ug/m<sup>3</sup>, pursuant to 40 CFR 50.7.

*DEP Response: On October 17, 2006, the federal NAAQS regulation changed from 65 to 35.*

Larry Harris: Restated his concern that the standards may not be stringent enough to protect public health. He also restated his question about the antidegradation language struck from the rule.

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*DEP Response: DEP cannot lower the NAAQS standards below that of federal levels unless the provisions for the stringency test in §22-1-3a are fully met. 45CSR14, in its entirety, has wholly replaced the intent of the relic anti-degradation language struck in proposed Rule 8.*

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

#### **45CSR40 - Control of Ozone Season Nitrogen Oxides Emissions**

Ozone Season CAIR NOx Rule - Incorporates revisions 40 CFR to Part 96.

Annual CAIR NOx Rule - Incorporates revisions to 40 CFR Part 96.

#### **45CSR41 – Control of Annual Sulfur Dioxide Emissions**

Annual CAIR SO<sub>2</sub> Rule - Incorporates revisions to 40 CFR Part 96.

#### **COMMENT**

Karen Price: Asked why the opt-in language was deleted from each of these rules.

*DEP Response: has removed the opt-in provisions in the three CAIR rules so that West Virginia can say that CAIR equals NOx RACT for EGUs under the PM2.5 implementation rule.*

#### **45CSR42 – Greenhouse Gas Emissions Inventory Program**

#### **SUMMARY**

The Greenhouse Gas Inventory Program Rule is authorized by SB337 passed in the 2007 legislative session. The rule establishes a program which requires the reporting and inventory of greenhouse gas emissions by stationary sources which emit more than a *de minimis* amount; inventories greenhouse gas emissions from stationary, area, mobile and biogenic sources, and accounts for reductions, capture and sequestration; provides for: a periodic compilation of a greenhouse gas inventory; a determination whether WV is a net sink or emitter; development of a registry for voluntary reductions; and a determination whether greenhouse gas can be developed as an asset for economic development.

#### **COMMENT**

Karen Price and Larry Harris: Both asked about the definitions of “anthropogenic” and “biogenic” in the rule and asked for examples of each.

*DEP Response: An example of an anthropogenic source is the coal extraction process and an example of a biogenic source is the erosion of soil exposing a coal seam. The agency does not plan*

*to ask sources to report biogenic activities. In order to receive credit a source must report all of its emissions.*

Karen Price: Can the reporting requirement in section 4.1 be made consistent with the emissions inventory requirements.

*DEP Response: The date in the rule is March 31<sup>st</sup> and is the same as the emissions inventory date.*

Karen Price: Does not believe fees should be required for greenhouse gas reporting.

*DEP Response: The agency will consider the issue.*

Karen Price: The last sentence in section 5.3 allowing the Secretary to request information is not authorized by statute.

*DEP Response: It is authorized by the statute.*

Karen Price: There should be a reasonable protocol for reporting emissions.

*DEP Response: D AQ purposely wrote the rule in a manner flexible to the Secretary, as greenhouse gas reduction quantification protocols are still being developed at this time.*

Karen Price: Is WV going to sign on to the climate registry or are we going to have our own?

*DEP Response: In order to trade, we have to be consistent with other programs, but we do not want to be more specific in the rule.*

Bill Raney: The exemption in section 3.2 includes language referring to sources covered by chapter 22-3 as well as sources required to report emissions. We are concerned this may take the exemption in the statute away.

*DEP Response: While the agency did not want to require mining extraction to report emissions, thermal dryers associated with coal prep plants often have huge emissions of greenhouse gases. That is the reason the statute and rule only exempt sources permitted under chapter 22-3.*

## **Division of Water and Waste Management**

### **33CSR9 – Standards for Beneficial use of Filtrate from Water Treatment Plants**

#### **SUMMARY**

This legislative rule establishes a mechanism and requirements for the 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.

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## COMMENT

Larry Harris: DEP made changes to this rule during the Interims process last year, and the rule now requires a permit for both short-term and long-term applications. This is a good change. However, we feel that most of the information required in Section 7.3. Permit Application Requirements for long-term permits should also be required for short-term permits.

*DEP Response: The requirements of section 7.3 were intended to be directed toward facilities that proposed to land apply filtrate as the beneficial use. It was intended to be applicable to both, if land application was the proposed method of reuse. Section 7.3 will be revised to more clearly reflect the applicability of the requirement for both long-term and short-term, if land application is the proposed beneficial reuse.*

Rick Roberts and Larry Harris: Regarding the environmental effects of disposal of sludge are the values in Table 1 of the rule sufficient?

*DEP Response: The Table 1 values are the same as the sewage sludge levels in DEP's other rules, and the agency believes they are supported by sound science.*

Rick Roberts and Larry Harris: Mr. Harris expressed concern with the distinction between "beneficial reuse" and "disposal." Mr. Roberts believes that his concern is satisfied by the language in section 3.1.b.1.

Rick Roberts: The rule should include general permits as proposed.

Larry Harris: Only individual permits should be allowed under the rule.

*DEP Response: There will be public notice in the general permit process.*

## **33CSR30 – Underground Storage Tanks**

### SUMMARY

There are several new provisions to reflect the 2005 Federal Energy Act, including: secondary containment requirements for new or replaced tanks or piping; secondary containment requirements for new or replaced fuel dispenser systems; tank eligibility for delivery, deposit or acceptance – enables agency to prevent deposit or delivery to a tank that is not in compliance; and training requirements for individuals who operate, maintain or are responsible to address emergencies from spills or releases from underground storage tank systems.

### COMMENT

Karen Price: Section 6.1. states "...including any person who accepts a delivery order, accepts payment, delivers or deposits product into an underground storage tank.....". The portion that states "...accepts payment..." should be removed from this section because those individuals within a company who accept payment or make payments most often do not know anything about the underground storage tank (UST), the operation of the UST, or the current regulatory status of the UST.

*DEP Response: This language will give the agency a better handle on transporters and middle-men involved in the process.*

Karen Price: Section 7.3.a.1. states "...the methodology for verifying attendance, the date, time and location of the course, the name of the offering organization, the credentials of the instructors, and a certification that the technology or methods.....".

1. The portion that states "...the date, time and location of the course,...." should be deleted. For large companies with many UST installations and locations there can be numerous individuals that need to be trained. Training will most likely occur on multiple dates, times, and locations that may not always be known until just prior to the training event. When new employees are hired training might occur on short notice and for one individual. The burden of having to report the dates, time and locations would hinder and slow down the training process and restrict a company's ability to comply.

2. The portion that states "...the credentials of the instructors..." should be removed. Credentials will vary from instructor to instructor new instructors might be utilized, and a company might not know which instructors will be used at the various training sessions until just prior to the training session. In addition, the course content is the main issue of concern and should be the main focus in obtaining State approval of a training program.

*DEP Response: Regarding dates, times and location of the training the agency will not require the information prior to the training. As far as the credentials of the instructor the agency needs this information as part of its curriculum review, in this case before the training.*

Karen Price: Section 7.3.a.2 - This section states that a nonrefundable application fee of \$280 must be submitted with the application. Larger companies may have one training program, but administer the training on multiple dates, times and locations. Having to submit an application for approval of the training program each time the program is administered would be cost prohibitive, burdensome, and would hinder the training process.

*DEP Response: The agency agrees and believes the rule only requires a one-time fee.*

Rick Roberts: Regarding the \$5.00 per ton fee, how does a source measure the tonnage? Perhaps the agency should consider using a cubic-yard approach.

*DEP Response: The agency will consider.*

## 47CSR2 – Requirements Governing Water Quality Standards

### SUMMARY

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The proposed revisions reflect updates identified during the federally-mandated triennial review of the Water Quality Standards rule. These include proposed additions to the trout water list, new criteria for nutrients, revisions to criteria in Appendix E and a use redesignation in the Guyandotte River Basin.

### COMMENT

Larry Harris: Does the use removal in section 7.2.d follow the federal Clean Water Act requirements?

*DEP Response: Yes, the agency followed all the requirements, federal and state, and required extensive information from the company. The agency also conducted two public meetings.*

Bill Raney: Mr. Raney repeated his concern with the listing of trout waters in the rule and the fact that the list has to be approved by the Legislature. Karen Price agreed with this comment. Jackie Hallinan and Larry Harris did not agree with this comment.

Karen Price: Questioned the need for Appendix D, because the Category C use applies to all state waters.

*DEP Response: Agency will consider.*

Karen Price: Will the agency consider not making use removals go through the legislative process.

*DEP Response: The agency decided not to include any language pertaining to this issue at this point in time, but will be subjecting this issue to the public participation process in the coming months.*

## 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 for state waters, Tiers 1, 2, 2.5 and 3. Each tier provides a graduated level of protection used during the NPDES permit issuance process. The proposed revisions to the rule carry forward the agency's antidegradation implementation efforts, and move the Tier 2.5 streams that had been on the "presumptive" list in Appendix C to a final proposed list in Appendix A. The agency is proposing a total of 156 streams be included on the list. The list of 156 waters is comprised of the 37 waters that did not receive objections in the formal objection period, those waters that contain reproducing trout and are 100% on public land, those waters listed as high quality on public land based on their high biological scores, and Loop Creek.

## COMMENT

Larry Harris: Scientific criteria should be used to add or delete streams from the Tier 2.5 list.

Rick Roberts: Can the SRF program give priority to facilities impacted by the Tier 2.5 list?

*DEP Response: Agency will take this under advisement.*

Larry Harris: Is the nomination process adequate?

*DEP Response: The agency believes the process is generally adequate and workable. If, however a large number of streams are nominated at one time, the individual notification requirements may be difficult and costly.*

At this point in the meeting, Bill Raney submitted written comments regarding several mining rules. (see attached)

## 60CSR8 - Environmental Excellence Program

Greg Adolfsen summarized the rule revisions. He said the changes would provide more flexibility for the agency to approve or disapprove of incentives in the program, as well as other flexibilities.

## SUMMARY

Changes are being proposed to the Environmental Excellence Program Rule (60CSR8) to better align with and follow the momentum of the United States Environmental Protection Agency's National Environmental Performance Track Program. Additionally, the primary purpose for the changes is to give more flexibility to the Department of Environmental Protection Cabinet Secretary in areas such as: Eligibility Criteria for Participation (section 4); Environmental Performance Record (section 5); Environmental Management System (section 6); Public Participation (section 8); Incentives (section 9); Procedures for Application (section 10); and Annual Performance Report (section 14). Language, such as "may include, but will not be limited to, the following," has been added to allow for this flexibility.

## COMMENT

Rick Roberts: Why is section 6.2 completely deleted?

*DEP Response: The section is not completely deleted, just the 1996 standards. This will allow the agency to use the most current standards.*

Bill Raney: How many companies are participating in the program?

*DEP Response: There are two in the National Program, Toyota and Dow.*

Mr. Raney: Suggested we start with 39.

Mr. Harris: Asked about section 2.11 in the definitions regarding “trading” and if it includes cross-pollutant trading.

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*DEP Response: The definitions were unchanged from the ones the EQB first adopted in 2001. The agency does not think it allows cross-pollutant trading.*

### **Division of Mining and Reclamation**

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

##### **SUMMARY**

§38-2-3.2.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. §38-2-5.4.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. The changes in §38-2-5.6 clarify what operations may be exempt from conducting a “Surface Water Runoff Analysis”, monitoring requirements and removes phase-in compliance schedule that expired on June 19, 2006. 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. New §38-2-11.8 titled “Bond Credit for Reclamation of Bond Forfeiture Site under a No Cost Reclamation Contract” encourages qualified operators to undertake reclamation of bond forfeiture sites for the purpose of eliminating hazards to human health and safety, abating pollution of surface and ground waters and the contribution of sediment to adjacent areas, and restoring land to beneficial uses. Changes in §38-2-14.15.c.2 and 14.15.d.3 are clarifying contemporaneous reclamation rules on excess spoil disposal. The changes in 14.15.e remove a phase-in compliance schedule that expired in 2004. The changes in §38-2-23 are being made to make the mining rule consistent with the proposed changes in the State’s NPDES Mining Rules.

##### **COMMENT**

No questions.

#### **47CSR5A – 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

Mr. Harris: How do we determine the “ordinary high water mark” under section 4.2.f.4 and how is it determined on a small stream?

*DEP Response: The US Army Corps of Engineers is responsible for determining “waters of the U.S.” under the rule.*

Mr. Harris: What are the differences between coal and non-coal impacts and how are they determined?

*DEP Response: Rule has to be consistent with statute.*

## 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. This rule clarifies provisions related to coal remining operations and provides a remining water quality standard variance for any parameter of concern.

### COMMENT

No questions.

## 199CSR1 - Surface Mining Blasting Rule

### SUMMARY

The proposed amendments change the following sections: 2.27. Adds the definition of “other structure” (structures built by the permittee); 2.38 Clarifies definition of “surface mine operation”; 3.2.C. Plan for blasting should include seismic monitoring when within 1000 ft of a structure, and performance specifications for blasting seismographs; 3.4. Areas of blasting that will be regulated for shaft and slope development; 3.6.c.3. Requiring field practice guidelines for blasting seismographs; 3.7a Request for alternate limits must have written consent of the owner; 3.9. Minimum qualifications and continuing education requirements for surveyor; 4.1.b. Allows the agency to consider blasting experience of applicants that was gained prior to the last three years; 4.5.d. Requires applicants who have been suspended or revoked in other states to show cause as to why should be issued a certification; 4.9.a.2 process for issuing a temporary suspension to a blaster and appeal rights; 4.13 Clarifies blasters responsibility of training the blasting crew; 5.2.a.3&4 Clarifies

the investigations process on a claim of blasting damage; 6.1 Requiring that any arbitrators that are removed from the list must be done with cause; and 7.3 Detonators and initiation systems are not considered for calculation of fees.

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## **COMMENT**

No questions.

## **Office of Oil and Gas**

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

## **SUMMARY**

The WVDEP, Office of Oil and Gas is proposing to revise existing rule 35CSR3. Series 3 is a legislative rule in place to enforce the provisions in WV Code §22-21-1 et seq., Coalbed Methane Wells and Units, commonly referred to as the Coalbed Methane Act. The revisions will: Address the establishment of special field rules to promote the orderly development of coalbed methane fields; Protect the correlative rights of all owners located within the geographic area for which special field rules are established; Provide a process by which the Review Board may hold a hearing on an application for special field rules and issue such rules; Insert language (Section 17) which was inadvertently deleted from the rule during the 2006 legislative session. This language existed in the rule prior to the revisions in 2006.

## **COMMENT**

Is this the same rule that went through last year?

*DEP Response: Yes, except for two sections that had changes:*

*16.2.e – advertisement “15 days”*

*16.1.6.1 – “FOIA” issue that came out of the LRMRC.*

Mr. Raney: Is this the product of the stakeholders group?

*DEP Response: Yes.*

Ms. Hallinan: What is a field rule?

*DEP Response: Special spacing procedure for coalbed methane wells. It deals with pooling and royalty issues.*

## **Division of Land Restoration**

### **33CSR10 – Recycling Assistance Grant Program**

## **SUMMARY**

This rule sets out guidelines and procedures for providing assistance grants to local governments and other interested parties for the purpose of planning, initiating, expanding, or upgrading recycling programs, provide related public education programs, and assist in recycling market procurement efforts.

## **COMMENT**

No questions.

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

### **SUMMARY**

This legislative rule establishes the eligibility, procedures, standards and legal documents required for voluntary and brownfield cleanups and updates risk protocol standards, including updates to the deminimis table. It also includes changes to the land use covenant section to incorporate the components of the Uniform Covenant Act.

### **COMMENT**

Ms. Dooley: Are there grant dollars for brownfields?

*DEP Response: Yes*

The next scheduled Advisory Council Meeting will be on May 30, 2007 at 10:00 a.m. Mr. Huffman asked the Council members to notify the DEP of which rules they want to discuss so the right agency person can be at the meeting. He also asked them to submit comments prior to the meeting if possible.

DO, temperature, and fecal coliform. We feel that they can assess these parameters and should not treat them separately.

#### **45CSR42 Greenhouse Gases**

The fact that the DEP is beginning to deal with the process of greenhouse gases that lead to global warming is commendable. Some questions on the rule were raised by Dr. Kotcon:

The greenhouse gases emissions inventory rule (45-42-1) needs to be >strengthened considerably. The sections on emissions inventory >(section 5, pages 3-4) is so vague as to be meaningless, especially >as it deals with sequestration for area sources and sinks. I do not >see how any meaningful data can be generated with this language. How would the carbon sequestration be estimated? Has there been studies estimating the biogenic incorporation of CO<sub>2</sub> per acre of woodland, for example? The rule appears to be a vague in how it would be implemented.

### **Air Quality and Emission Rules (see below)**

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

Don Garvin pointed out that the the antidegradation language was removed from this rule, and it was explained that the agency feels these provisions are now covered in 45-CSR-14( "Prevention of Significant Deterioration.") However, the language that was stricken does not appear in 45-CSR-14, and the stricken language is the ONLY statement in the rules of West Virginia's antidegradation policy for air quality. The environmental community still believes the stricken language should be restored.

Here is what should be reinstated:

#### **§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.

#### **45CSR41 Control of Annual SO<sub>2</sub> emissions**

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

#### **45CSR39 Nitrogen Oxides**

I raised the general concern whether the standards for air quality were consistent with the EPA guidelines or not. Further, were any recognized health authorities consulted when these levels were determined? I also raised the issue that West Virginia is increasing supplying electricity to the population east of our mountains. New transmission lines are proposed that are to be connected with coal burning power plants. Billy Jack Gregg, Consumer Advocate for the WV PSC has pointed out that the states receiving our generated power will not permit generation plants in their region. They are concerned about air pollution and its various effects. But they need power, so they turn to West Virginia. This helps the coal industry and generation plants, but puts the health of West Virginians in jeopardy. I feel that our air quality and emission limits should be even more stringent than the EPA calls for in order to protect our citizens. This should be particularly true for power plants that export electricity.

Dr. Kotcon has raised the following issues:

#### 45-CSR-8 Ambient Air Quality Standards

The standards for PM<sub>2.5</sub> and Ozone are not adequately protective. I recommend that the standards be lowered from 15  $\mu\text{g}/\text{m}^3$  to 13  $\mu\text{g}/\text{m}^3$  in section 4.2.b., and from 0.08 ppm to 0.07 ppm in section 4.4.b.

The air standards (45-8-1) retains the standards for PM<sub>2.5</sub> and ozone  
>that the EPA Clean Air Scientific Advisory Council has already  
>determined to be inadequate. Keeping these old standards will kill  
>dozens or hundreds of West Virginians each year.

>The rule on refuse combustion (45-6-1) attempts to revise the  
>definition of low-level radioactive waste and revives the  
>Below-Regulatory\_Concern (BRC) issue from some years ago. It also  
>creates a large number of exemptions for "temporary" pollution  
>sources. I am not yet sure if this re-opens old battles over  
>medical waste incineration, but this was a really hot issue a few  
>years back.

Comment submitted  
by Karen Price at  
Council  
meeting  
5/30/07

Questions/Comments on DEP's 2007 Proposed Rules

- **45 CSR 8 Ambient Air Quality Standards**

Section 4.2.c – PM<sub>2.5</sub> Maximum 24-Hour Average Concentration. The level for the 24-hour primary and secondary standard states 35 ug/m<sup>3</sup>. This should be 65 ug/m<sup>3</sup>, pursuant to 40 CFR 50.7.

- **45 CSR 39, 45 CSR 40, 45 CSR 41**

The opt-in unit language is deleted from each of these rules. What is the purpose for the deletion of these provisions?

- **33 CSR 30, Underground Storage Tank Rules**

Section 6.1. states "...including any person who accepts a delivery order, accepts payment, delivers or deposits product into an underground storage tank.....". The portion that states "...accepts payment..." should be removed from this section because those individuals within a company who accept payment or make payments most often do not know anything about the underground storage tank (UST), the operation of the UST, or the current regulatory status of the UST.

Section 7.3 a.1. states "...the methodology for verifying attendance, the date, time and location of the course, the name of the offering organization, the credentials of the instructors, and a certification that the technology or methods...."

1. The portion that states "...the date, time and location of the course,..." should be deleted. For large companies with many UST installations and locations there can be numerous individuals that need to be trained. Training will most likely occur on multiple dates, times, and locations that may not always be known until just prior to the training event. When new employees are hired training might

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occur on short notice and for one individual. The burden of having to report the dates, time and locations would hinder and slow down the training process and restrict a company's ability to comply.

2. The portion that states "...the credentials of the instructors..." should be removed. Credentials will vary from instructor to instructor new instructors might be utilized, and a company might not know which instructors will be used at the various training sessions until just prior to the training session. In addition, the course content is the main issue of concern and should be the main focus in obtaining State approval of a training program.

Section 7.3.a.2 - This section states that a nonrefundable application fee of \$280 must be submitted with the application. Larger companies may have one training program, but administer the training on multiple dates, times and locations. Having to submit an application for approval of the training program each time the program is administered would be cost prohibitive, burdensome, and would hinder the training process. The State should clarify or make provision for a company to submit one application for the training program that will be administered to all company USI facilities. This will make the \$280 application fee reasonable and the application process less burdensome.

**FISCAL NOTE FOR PROPOSED RULES**Rule Title: 45CSR8 - "Ambient Air Quality Standards"Type of Rule: X Legislative        Interpretive        ProceduralAgency: Division of Air QualityAddress: 601 57<sup>th</sup> Street SE  
Charleston, WV 25304Phone Number: 926-0475Email: tmowrer@wvdep.org**Fiscal Note Summary**

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

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

Rule Title: 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.

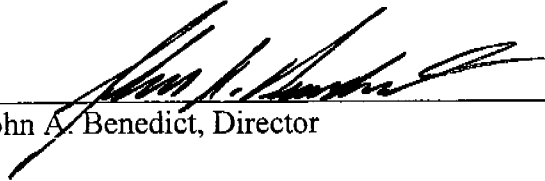
The proposed revisions to this rule will have a minimal effect on the costs to the Division of Air Quality because they impose no additional requirements beyond current federal requirements. Costs are covered under previous cost estimates.

### 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 1, 2007

Signature of Agency Head or Authorized Representative

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

RECEIVED

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

2007 JUL 26 PM 2:08

SECRETARY OF STATE  
STATE OF WEST VIRGINIA

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

**§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. 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.

1.5: 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. “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 manner which causes or significantly contributes to an exceedance of 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.  $\text{PM}_{10}$~~

~~4.1.b.1.A. Annual Arithmetic Mean Concentration - 50 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ). The standards are attained where the expected annual arithmetic mean, in accordance with Appendix K of 40 CFR 50, is less than or equal to 50  $\mu\text{g}/\text{m}^3$ .~~

~~4.1.b.1.B:~~

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. PM<sub>10</sub> 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  $\mu\text{g}/\text{m}^3$   $\mu\text{g}/\text{m}^3$ , as determined in accordance with Appendix K of 40 CFR Part 50, is less than or equal to one.

4.2.b. 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.c. 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 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 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 manner which causes or significantly contributes to an exceedance of 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 manner which causes or significantly contributes to an exceedance of 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 subdivision 4.2.a, 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  $\Delta$  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  $\Delta$  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  $\Delta$  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  $\Delta$  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.

#### **§45-8-6. §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.

**NOTICE OF PUBLIC HEARING AND  
PUBLIC COMMENT PERIOD**

On Monday, July 9, 2007 beginning at 6 p.m., the West Virginia Department of Environmental Protection, Division of Air Quality (DAQ) will hold a public hearing on proposed revisions to existing legislative rules. Oral and written comments shall be limited only to the proposed revisions to the following existing legislative rules:

- 45CSR6 To Prevent and Control Air Pollution From Combustion of Refuse;
- 45CSR8 Ambient Air Quality Standards for Sulfur Oxides and Particulate Matter;
- 45CSR16 Standards of Performance for New Stationary Sources Pursuant to 40 CFR Part 60;
- 45CSR18 To Prevent and Control Emissions From Commercial and Industrial Solid Waste Incineration Units;
- 45CSR25 To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities;
- 45CSR34 Emission Standards for Hazardous Air Pollutants for Source Categories Pursuant to 40 CFR Part 63;
- 45CSR39 Control of Annual Nitrogen Oxide Emissions to Mitigate Interstate Transport of Fine Particulate Matter and Nitrogen Oxides;
- 45CSR40 Control of Ozone Season Nitrogen Oxide Emissions to Mitigate Interstate Transport of Ozone and Nitrogen Oxides; and
- 45CSR41 Control of Annual Sulfur Dioxide Emissions to Mitigate Interstate Transport of Fine Particulate Matter and Sulfur Dioxide.

On Monday, July 9, 2007, after public hearings on the above proposed legislative rules, the West Virginia Department of Environmental Protection, DAQ will hold a public hearing on the following proposed legislative rule:

- 45CSR42 Greenhouse Gas Emissions Inventory Program.

Upon authorization and promulgation of revisions to 45CSR6, 45CSR8, 45CSR39, 45CSR40 and 45CSR41, the DAQ will submit the final rules to the U.S. Environmental Protection Agency (U.S. EPA) as revisions to the State Implementation Plan, pursuant to the federal Clean Air Act.

Upon authorization and promulgation of revisions to 45CSR16, the DAQ will submit the final rule to the U.S. EPA for approval as a part of West Virginia's program delegation of the federal New Source Performance Standards.

Upon authorization and promulgation of revisions to 45CSR18, the DAQ will submit the final rule to the U.S. EPA for approval as a part of West Virginia's Section 111(d)/129 Plan and program delegation of the federal New Source Performance Standards.

Upon authorization and promulgation of revisions to 45CSR25, the DAQ will submit the final rule to the U.S. EPA for approval as part of the West Virginia Hazardous Waste Management Program.

Upon authorization and promulgation of revisions to 45CSR34, the DAQ will submit the final rule to the U.S. EPA for approval as a part of West Virginia's program delegation of the National Emission Standards for Hazardous Air Pollutants.

Upon authorization and promulgation of 45CSR42, the DAQ will begin implementation of a Greenhouse Gas Inventory Program.

The public hearing will be held at the Department of Environmental Protection, Dolly Sods Conference Room, 601 57<sup>th</sup> Street SE, Charleston and is open to the public. Written and oral comments will be accepted until the close of the hearing and will be made a part of the rulemaking record. Comments will also be accepted by fax (304-926-0479), U.S. Mail, or e-mail if postmarked or delivered by the close of business on July 9, 2007.

Copies of the proposed legislative rules may be viewed between 8:30 a.m. and 4:30 p.m. at the Division of Air Quality, 601 57<sup>th</sup> SE, Charleston, WV 25304 beginning June 8, 2007 or electronically upon e-mail request to: [tmowrer@wvdep.org](mailto:tmowrer@wvdep.org). For a copy of the proposed rules, access the following web address: [www.wvdep.org/daq](http://www.wvdep.org/daq). Choose Public Notice and Comment.

Send written comments to John A. Benedict, Director, Division of Air Quality at the above address. Please identify the draft document to which the comments apply, the commenter's name, address, and telephone number. Comments will also be accepted by e-mail if transmitted by 5:00 p.m. on July 9, 2007 to: [tmowrer@wvdep.org](mailto:tmowrer@wvdep.org). Comments submitted by U.S. Mail must be postmarked by July 9, 2007.



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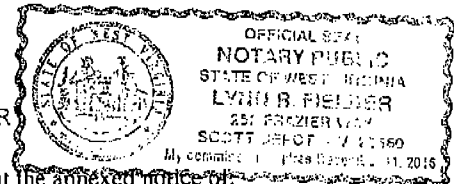
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State of West Virginia.

AFFIDAVIT OF PUBLICATION

I, Amanda Legg of THE CHARLESTON GAZETTE, A DAILY DEMOCRATIC NEWSPAPER THE DAILY MAIL, A DAILY REPUBLICAN NEWSPAPER, published in the city of Charleston, Kanawha County, West Virginia, do solemnly swear that the annexed notice of Public Notice - Legislat



was duly published in said paper(s) during the dates listed below, and was posted at the front door of the court house of said Kanawha County West Virginia, on the 9TH day of JUNE 2007 Published during the following dates: 06/08/07-06/08/07
Subscribed and sworn to before me this 12 day of June
Printers fee \$ 396.90

Notary Public signature and stamp

**Division of Mining and Reclamation**  
**36CSR3 - Surface Mining Reclamation Rule** - The public hearing will be held at 5 p.m. on July 10, 2007, in the Canaan Valley Room. The comment period will end at the conclusion of the hearing.

**47CSR5A - Individual State Certification of Activities Requiring a Federal Permit** - The public hearing will be held at 6 p.m. on July 10, 2007, in the Canaan Valley Room. The comment period will end at the conclusion of the hearing.

**47CSR20 - WVNPDES Rules for Coal Mining Facilities** - The public hearing will be held at 6 p.m. on July 10, 2007, in the Canaan Valley Room. The comment period will end at the conclusion of the hearing.

**39CSR1 - Surface Mining Blasting Rule** - The public hearing will be held at 5 p.m. on July 10, 2007, in the Canaan Valley Room. The comment period will end at the conclusion of the hearing.

For more information on any of the DWMR rules, call 926-0490.

**Office of Oil and Gas**  
**30CSR1 - Coalbed Methane Wells Rule** - The public hearing will be held at 4 p.m. on July 17, 2007, in the Coopers Rock Training Room. The comment period will end at the conclusion of the hearing. For more information, call 926-0450.

**Division of Land Restoration**  
**33CSR10 - Recycling Assistance Grant Program** - The public hearing will be held at 6 p.m. on July 12, 2007, in the Coopers Rock Training Room. The comment period will end at the conclusion of the hearing.

**40CSR3 - Voluntary Remediation and Redevelopment Rule** - The public hearing will be held at 6:30 p.m. on July 12, 2007, in the Coopers Rock Training Room. The comment period will end at the conclusion of the hearing.

For more information on any of the DLR rules, call 926-0455.

**Public Information Office**  
**40CSR8 - Environmental Excellence Rule** - The public hearing will be held at 7 p.m. on July 17, 2007, in the Coopers Rock Training Room. The comment period will end at the conclusion of the hearing. For more information, call 926-0440.

(287864)

**Division of Water and Waste Management**  
**33CSR9 - Standards for Beneficial Use of Filtrate from Water Treatment Plants** - The public hearing will be held at 6 p.m. on July 2, 2007, in the Coopers Rock Training Room. The comment period will end at the conclusion of the hearing.

**41CSR20 - Hazardous Waste Management System** - The public hearing will be held on July 11, 2007, in the Coopers Rock Training Room. The comment period will end at the conclusion of the hearing.

**33CSR90 - Underground Storage Tanks** - The public hearing will be held at 6:30 p.m. on July 11, 2007, in the Coopers Rock Training Room at DEP's Charleston headquarters. The comment period will end at the conclusion of the hearing.

**47CSR2 - Rules Governing Water Quality Standards** - The public hearing will be held at 6 p.m. on July 16, 2007, in the Coopers Rock Training Room. The comment period will end at 5 p.m. on July 17, 2007. The rule includes a proposed use redesignation for Park Branch in the Guyandotte River Basin (see additional information in the information sheet attached to the briefing document).

**47CSR10 - National Pollution Discharge Elimination System (NPDES)** - The public hearing will be held at 6:30 p.m. on July 17, 2007, in the Coopers Rock Training Room. The comment period will end at the conclusion of the hearing.

**47CSR24 - Dam Safety** - The public hearing will be held at 7 p.m. on July 11, 2007, in the Coopers Rock Training Room. The comment period will end at the conclusion of the hearing.

**40CSR5 - Antidegradation Implementation Procedures** - The public hearing will be held at 7 p.m. on July 16, 2007, in the Coopers Rock Training Room. The comment period will end at 5:00 p.m. on July 17, 2007.

For more information on any of the DWMR rules, call 926-0495.

**PUBLIC NOTICE**

The West Virginia Department of Environmental Protection has scheduled public hearings for its 2008 proposed legislative rules. All hearings will be held at DEP's Charleston headquarters, 601 57th Street S.E., Charleston, WV 26304. Oral and written comments shall be limited to the proposed revisions to the following rules. All comments will be made a part of the rulemaking record. Copies of the rules and other rule documents are available from the Secretary of State's office or from the agency at [www.wvdep.org/2008rules](http://www.wvdep.org/2008rules). You may also obtain hard copies of the information by calling the phone numbers listed below.

Written comments may be submitted to the Public Information Office at the above address. Comments may also be e-mailed to [comments@wvdep.org](mailto:comments@wvdep.org). The hearing dates, locations and comment deadlines are as follows:

- Division of Air Quality**  
**45CSR6 - Control of Air Pollution from Combustion of Release**  
**45CSR6 - Ambient Air Quality Standards**  
**45CSR16 - Standards of Performance for New Stationary Sources**  
**45CSR18 - Control of Air Pollution from Combustion of Solid Waste**  
**45CSR28 - Control of Air Pollution from Hazardous Waste Treatment, Storage and Disposal Facilities**  
**45CSR34 - Emission Standards for Hazardous Air Pollutants**  
**45CSR37 - Control of Annual Nitrogen Oxides Emissions**  
**45CSR40 - Control of Ozone Season Nitrogen Oxides Emissions**  
**45CSR41 - Control of Annual Sulfur Dioxide Emissions**  
**45CSR42 - Greenhouse Gas Emissions Inventory Program**

The public hearing for all air quality rules will be held at 6 p.m. on July 9, 2007, in the Dolly Sods Conference room. The comment period will end at the conclusion of the hearing. UBOB authorization and promulgation of revisions to 45CSR6, 45CSR8, 45CSR39, 45CSR40, and 45CSR41, the DAQ will submit the rules to the U.S. Environmental Protection Agency (EPA) as revisions to the State Implementation Plan pursuant to the federal Clean Air Act (CAA). Rules 45CSR16, 45CSR18, 45CSR25, and 45CSR34 will also be submitted to EPA to fulfill other federal obligations under the CAA, including delegations, plans and program approvals. For more information on any of the air rules, call 926-0475.



ORIGINAL

1

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

In the matter of: PROPOSED REVISIONS TO 45CSR8 - Ambient  
Air Quality Standards

Transcript of proceedings had at a public hearing in the above-styled matter taken by Missy L. Young, Certified Court Reporter, at the West Virginia Department of Environmental Protection, Division of Air Quality, Dolly Sods Conference Room, 601 57th Street, S.E. Charleston, West Virginia, commencing at 6:09 p.m., on the 9th day of July 2007, pursuant to notice.

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MISSY L. YOUNG, C.C.R.  
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P R O C E E D I N G S

1  
2 MS. CHANDLER: The purpose of this public  
3 hearing is to accept comments on the proposed revisions to  
4 45CSR8 - Ambient Air Quality Standards.

5 The purpose of this rule is to establish  
6 ambient air quality standards for sulfur oxides,  
7 particulate matter, carbon monoxide, ozone, nitrogen  
8 dioxide and lead, equivalent to those national primary and  
9 secondary National Ambient Air Quality Standards  
10 established by the U.S. Environmental Protection Agency.

11 National primary ambient air quality  
12 standards define levels of air quality which the  
13 Administrator of the U.S. Environmental Protection Agency  
14 judges are necessary, with an adequate margin of safety, to  
15 protect the public health. National secondary ambient air  
16 quality standards define levels of air quality which the  
17 Administrator of the U.S. Environmental Protection Agency  
18 judges necessary to protect the public welfare from any  
19 known or anticipated adverse effects of a pollutant.

20 Such standards are subject to revision, and  
21 additional primary and secondary standards may be  
22 promulgated as the Administrator of the U.S. Environmental  
23 Protection Agency deems necessary to protect the public

1 health and welfare.

2                   The Division of Air Quality is streamlining  
3 the regulatory structure by consolidating all of the  
4 National Ambient Air Quality Standards into one rule.  
5 Consequently, this rule will repeal and replace 45CSR9 -  
6 "Ambient Air Quality Standards for Carbon Monoxide and  
7 Ozone" which was filed on April 16, 2002, and became  
8 effective on July 1, 2002, and 45CSR12 - "Ambient Air  
9 Quality Standard for Nitrogen Dioxide" which was filed May  
10 19, 2000, and became effective June 1, 2000.

11                   Upon authorization and promulgation of  
12 revisions to 45CSR8, the DAQ will submit the final rules to  
13 the U.S. Environmental Protection Agency as revisions to  
14 the State Implementation Plan pursuant to the federal Clean  
15 Air Act.

16                   The floor is now open for comments. Please  
17 state your name and any affiliation.

18                   There being nothing further, this public  
19 hearing for the proposed revisions to 45CSR8 is concluded.

20   (WHEREUPON, the hearing was  
21 concluded at 6:11 p.m.)

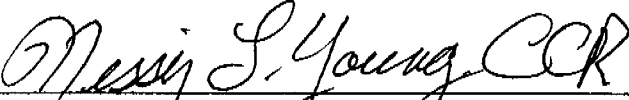
22

23

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

I, the undersigned, Missy L. Young, a Certified Court Reporter and Commissioner within and for the State of West Virginia, duly commissioned and qualified, do hereby certify that the foregoing, is to the best of my skill and ability, a true and accurate transcript of all the proceedings had in the aforementioned matter.

Given under my hand and official seal this 20<sup>th</sup> day of July 2007.

  
\_\_\_\_\_  
Missy L. Young  
Certified Court Reporter  
Commissioner for the State of West Virginia

My commission expires April 15, 2008.

**From:** Paula Finck <paulafinck@yahoo.com>  
**To:** <comments@wvdep.org>  
**Date:** 6/27/2007 10:08:43 PM  
**Subject:** Re: air quality rules

Now is the time to put into effects the toughest air quality rules for the sake of the present and future health of the citizens of these United States of America. It is your job and your responsibility to the people.

Respectfully yours,  
Paula Finck

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## **45CSR8**

### **AMBIENT AIR QUALITY STANDARDS**

#### **RESPONSE TO COMMENTS**

On June 8, 2007, the Division of Air Quality (DAQ) commenced a thirty day public comment period and subsequently held a public hearing on July 9, 2007 to accept oral comments on proposed revisions to legislative rule 45CSR8. Written comments were also accepted through 6:00 PM on Monday, July 9, 2007. No commenter submitted written comments regarding proposed revisions to rule 45CSR8, and no commenter provided verbal comments.