

Do Not Mark In This Box

FORM #3

12-22-99

Authorized Signature

\$8.80



Executive Office
#10 McJunkin Road
Nitro, WV 25143-2506
Telephone No: (304)759-0575
Fax No: (304)759-0526



West Virginia Bureau of Environment

Cecil H. Underwood
Governor

Michael C. Castle
Commissioner

December 22, 1999

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

RE: 45CSR8 - "Ambient Air Quality Standards for Sulfur Oxides and Particulate Matter"

Dear Ms. Cooper:

This letter will serve as my approval to file the above-referenced rule with your office as an agency-approved legislative rule.

Your cooperation in the above request is very much appreciated. If you should have any questions or require additional information, please call Carrie Chambers in my office at 759-0515.

Sincerely,

Michael C. Castle
Commissioner

MCC:cc

cc: Karen Watson
Carrie Chambers

Questionnaire

DATE: December 22, 1999

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (AGENCY NAME, ADDRESS & PHONE NUMBER) Division of Environmental Protection
Office of Air Quality
1558 Washington Street, East
Charleston, WV 25311-2599
Phone: 304-558-4022

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

1. Authorizing statute (s) citation: W.Va. Code §§22-5-1 et seq.

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

September 1, 1999

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

- I. Class I legal advertisement, Charleston Daily Mail and Charleston Gazette
- II. Sent a copy of the Public Notice to our agency mailing list
- III. DEP's "Public Notice Bulletin" and DEP's "In Depth" (September issues)
- IV. Public Notice placed on agency's website

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

October 12, 1999

- Attached X No comments received

- December 22, 1999

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

- See "F" above

- 2

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

- b. Date of hearing or comment period:

N/A

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

N/A

- d. Attach findings and determinations and reasons:

Attached N/A

**BUREAU OF ENVIRONMENT
DIVISION OF ENVIRONMENTAL PROTECTION**

BRIEFING DOCUMENT

Rule Title: 45CSR8- "Ambient Air Quality Standards for Sulfur Oxides and Particulate Matter"

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

B. SUMMARY OF RULE:

The purpose of this rule is to establish ambient air quality standards for sulfur oxides and particulate matter, equivalent to those national primary and secondary ambient air quality standards established by the U.S. EPA.

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

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:

In accordance with sections 108 and 109 of the Clean Air Act (CAA), EPA reviewed the air quality criteria and national ambient air quality standards (NAAQS) for particulate matter (PM) and for ozone (O₃). Based on these reviews, EPA revised the standards for both classes of pollutants (July 18, 1997 Federal Register).

With respect to PM, EPA revised the current primary PM₁₀ standards by adding two new primary PM_{2.5} standards to provide increased protection against a wide range of PM-related health effects, including premature mortality and increased hospital admissions and emergency room visits (primarily in the elderly and individuals with cardiopulmonary disease); increased respiratory symptoms and disease (in children and individuals with cardiopulmonary disease such as asthma); decreased lung function (particularly in children and individuals with asthma); and alterations in lung tissue and structure and in respiratory tract defense mechanisms. The revised annual PM_{2.5} standard would be based on the 3-year average of the annual arithmetic mean PM_{2.5} concentrations. The revised 24-hour PM_{2.5}

standard would be based on the 3-year average of the 98th percentile of 24-hour PM_{2.5} concentrations at each monitor within an area. The EPA revised the current 24-hour primary PM₁₀ standard of 150 µg/m³ by replacing the 1-expected-exceedance form with a 99th percentile form, averaged over 3 years at each monitor within an area. The EPA retained the current annual primary PM₁₀ standard of 50 µg/m³. Further, EPA adopted new data handling conventions for calculating 98th percentile values and spatial averages (Appendix K), revised the reference method for monitoring PM as PM₁₀ (Appendix J), and adopted a new reference method for monitoring PM as PM_{2.5} (Appendix L).

The 1999 Legislature, by the passage of House Bill No. 2533, authorized the promulgation of the rule adopting the revised federal standards discussed above. This rule was filed by the Director June 1, 1999, and was made effective August 30, 1999. However, as a result of a federal court ruling on May 14, 1999, the federal standard for PM_{2.5} was remanded to U.S. EPA and the standard for PM₁₀ was vacated. (See American Trucking Associations, Inc., et al. v. United States Environmental Protection Agency, Case Nos. 97-1440 and 97-1441, United States Court of Appeals, District of Columbia Circuit, May 14, 1999.)

To be consistent with this ruling, the rule being proposed by the Director suspends the PM_{2.5} standard until further direction from either the U.S. EPA or the U.S. Supreme Court of Appeals and reinstates the previous PM₁₀ standard.

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

Since the proposed rule amendments are being made to conform to the federal counterpart rule as interpreted by the D.C. Circuit Court of Appeals, no determination of stringency is required.

E. CONSTITUTIONAL TAKINGS DETERMINATION:

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

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

At a meeting September 9, 1999, the Advisory Council reviewed and discussed this rule; there were no substantive changes as a result of the Council's meeting. (See attached minutes of that meeting.)

APPROVED MINUTES

ENVIRONMENTAL PROTECTION ADVISORY COUNCIL

September 9, 1999, Director's Conference Room, Nitro

The seventeenth meeting of the DEP Advisory Council was held Thursday, September 9, 1999, in the Director's Conference Room located in Nitro, Chairman Michael Castle called the meeting to order at 2:00 p.m.

Attending:

Advisory Council Members:

Michael Castle, Chairman
Jacqueline Hallinan
William Raney
William Samples

Environmental Protection:

Tony Grbac
Randy Huffman
Skip Kropp
Pam Nixon
Terry Polan
Cap Smith
Barbara Taylor
Karen Watson

- 1) Chairman Castle introduced himself and made opening remarks.
- 2) Review and Approval of June 10, 1999 Minutes. Chairman Castle called the meeting to order at 2:00 p.m. The first order of business was approval of the minutes of the June 10, 1999, Advisory Council meeting: they were approved as written.
- 3) Update on Status of Blasting Rule by Randy Huffman. Deputy Director Huffman reiterated that the Blasting Rule was developed as a result of Senate Bill 681. The Blasting Rule was originally filed in June; however due to complaints by citizens/industry regarding their lack of involvement in the development of the rule, a stakeholders group was formed. This group met weekly to review the rule and to make any agreed upon changes by the end of July. The results of the meetings are available on the DEP website - Blasting Stakeholders. A number of consensus recommendations to the rule were developed into a 2-page summary. The revised rule was filed in August.

4) Discussion of Proposed Rules by Karen Watson

45CSR8 - AMBIENT AIR QUALITY STANDARDS FOR SULFUR OXIDES AND PARTICULATE MATTER. The purpose of this rule is to establish ambient air quality standards for sulfur oxides and particulate matter, equivalent to those national primary and secondary ambient air quality standards established by the U. S. EPA. The rule being proposed by the Director suspends the PM 2.5 standard until further direction from either the U.S. EPA or the U.S. Supreme Court of Appeals. The proposed rule retains the standard for PM10 since the basis for the Court vacating the PM10 standard was that the PM2.5 and the PM10 standards could not co-exist without there being essentially double regulation.

45CSR9 - RULES PERTAINING TO AMBIENT AIR QUALITY STANDARDS FOR CARBON MONOXIDE AND OZONE. The purpose of this rule is to establish ambient air quality standards for carbon monoxide and ozone, equivalent to those national primary and secondary ambient air quality standards established by the U. S. EPA. To be consistent with this ruling, the rule being proposed by the Director suspends the ozone standard until further direction from either U.S. EPA or the Supreme Court of Appeals.

45CSR24 - TO PREVENT AND CONTROL EMISSIONS FROM HOSPITAL/MEDICAL/INFECTIOUS WASTE INCINERATORS. This rule establishes emission limits and performance standards for new and existing hospital/medical/infectious waste incinerators (HMIWI). The pollutants regulated by this rule include metals (cadmium, lead, and mercury); particulate matter; acid gases (sulfur dioxide and nitrogen oxides, and hydrogen chloride); organic compounds (dioxins and furans); carbon monoxide; and opacity. This rule also established requirements for HMIWI operator training/qualification, waste management plans, and testing/monitoring of pollutants and operating parameters. The purpose of revising the rule is to correct typographic errors and to maintain consistency with the federal rule.

5) Discussion of Proposed Rule by Terry Polan.

45CSR13 - PERMITS FOR CONSTRUCTION, MODIFICATION, RELOCATION AND OPERATION OF STATIONARY SOURCES OF AIR POLLUTANTS, NOTIFICATION REQUIREMENTS, ADMINISTRATIVE UPDATES, TEMPORARY PERMITS, GENERAL PERMITS, AND PROCEDURES FOR EVALUATION - The purpose of this rule is to set forth the procedures for stationary source reporting, and the criteria for obtaining a permit to construct and operate a new stationary source which is not a major stationary source, to modify a non-major stationary source, to make modifications which are not major modifications to an existing major stationary source, and to relocate non-major stationary sources with the State of West Virginia. Such construction, modification or relocation without a required permit is a violation of this rule. This rule also establishes the requirements for obtaining an administrative update to an existing permit, temporary permit or a general permit, and for filing notifications of changes not otherwise subject to the permit requirements of this rule. The rule

establishes public participation requirements as well as procedures for the transfer, suspension and revocation of permits.

6) Discussion by Cap Smith regarding Tire Piles. Cap Smith, Chief of the Office of Waste Management, discussed the problems and solutions currently being utilized regarding existing tire piles and the handling of the 2 million tires being produced each year. The EPA wants to be involved in the solution; however, they have no funding sources available to dedicate to the problem. Legislation will again be proposed. Mr. Smith also commented on the serious ongoing tire fire in Toledo, Ohio and distributed an article regarding this hazard (copy attached).

7) Discussion and Update by Barbara Taylor regarding TMDL Stakeholders. Barbara Taylor, Chief, Office of Water Resources, provided a detailed update on the status of the efforts of the TMDL Stakeholders group and provided explanatory handouts/graphics (copies attached). The TMDL Stakeholders group is focusing on going forward and making improvements.

8) Status update by Skipp Kropp on Regional Haze order. Skipp Kropp reported that EPA has promulgated a Regional Haze rule. The rule assumes that the EPA NOx SIP Call for ozone transport and the new 8-hour ozone standard are in place. Inasmuch as the new ozone standard has been remanded to EPA in an appeal in which WV DEP participated, and the NOx SIP Call is being litigated, so far successfully, by WV DEP and other parties, Mr. Kropp advised that OAQ had also joined Michigan and several other parties in appealing the haze rule as well.

Chairman Castle thanked everyone for attending. The meeting was adjourned at 4:30 p.m.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 45CSR8 - "Ambient Air Quality Standards for Sulfur Oxides and Particulate Matter"

Type of Rule: X Legislative Interpretive Procedural

Agency: Office of Air Quality

Address: 1558 Washington Street, East

Charleston, WV 25311-2599

1. Effect of Proposed Rule	Annual		Fiscal Year		
Estimated Total Cost	Increase	Decrease	Current	Next	There-after
	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
Personal Services	0	0	0	0	0
Current Expense	0	0	0	0	0
Repairs and Alterations	0	0	0	0	0
Equipment	0	0	0	0	0
Other	0	0	0	0	0

2. Explanation of above estimates: The actual revisions to this rule will have no additional economic impact because they impose no additional requirements beyond the current federal requirements.
3. Objectives of these rules: This rule revises the ambient air quality standards for sulfur oxides and particulate matter to conform to those promulgated by the U.S. EPA under the federal Clean Air Act, as amended, and as interpreted by the U.S. Circuit Court of Appeals for the D.C. Circuit. Promulgation of this rule by the Legislature is necessary for the State to fulfill its responsibilities under the Clean Air Act.

Appendix B
Fiscal Note For Proposed Rules
Page Two

4. Explanation of Overall Economic Impact of Proposed Rule.
A. Economic Impact on State Government.

See Section 2.

- B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens.

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

- C. Economic Impact on Citizens/Public at Large.

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

Date: 12/22/99

Signature of Agency Head or Authorized Representative

Carrie J. Chambers

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

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 ambient air quality standards for sulfur oxides and particulate matter, equivalent to those national primary and secondary ambient air quality standards 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.

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

1.3. Filing Date. -- ~~June 1, 1999.~~

1.4. Effective Date. -- ~~August 30, 1999.~~

1.5. Former Rules -- This legislative rule amends 45CSR8 - "Ambient Air Quality Standards for Sulfur Oxides and Particulate Matter" which was filed on June 1, 1999 and became effective on August 30, 1999.

§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 Director 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 Director 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 Director 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. Definitions.

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

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

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

3.4. "PM_{2.5}" means particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers.

3.5. "PM₁₀" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers.

3.6. "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.

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

4.1. The following 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 - 80 micrograms per cubic meter (0.003 parts per million).

4.1.a.1.B. Maximum 24-Hour Concentration - 365 micrograms per cubic meter (0.14 ppm) - not to be exceeded more than once per year.

4.1.a.2. Secondary Standard

4.1.a.2.A. Maximum Three (3) Hour Concentration - 1300 micrograms per cubic meter (0.5 ppm) - not to be exceeded more than once per year.

4.1.b. Particulate Matter Primary and Secondary Standards

4.1.b.1. PM_{2.5}

4.1.b.1.A. Annual arithmetic mean concentration of 15 micrograms per cubic meter (ug/m³), attained 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 micrograms per cubic meter (15.0 ug/m³).

4.1.b.1.B. Average 24-hour concentration of 65 micrograms per cubic meter (ug/m³), attained when the 98th percentile 24-hour concentration, as determined in accordance with Appendix N of 40 CFR Part 50, is less than or equal to 65 micrograms per cubic meter (65 ug/m³).

4.1.b.1.C. Inasmuch as the federal PM_{2.5} standard was remanded to the U.S. EPA (see American Trucking Associations, Inc., et al. v. United States Environmental Protection Agency, Case Nos. 97-1440 and 97-1441, United States Court of Appeals, District of Columbia Circuit, May 14, 1999), the provisions of subparagraphs 4.1.b.1.A. and 4.1.b.1.B. are suspended until the Director files notice with the Secretary of State that U.S. EPA or the United States Supreme Court of Appeals has reinstated substantively the same standard. In the event the U.S. EPA promulgates a different standard, the suspension will remain in effect until this rule is amended by the Director in accordance with the rule-making procedures of W.Va. Code §29A-3-1 et seq.

4.1.b.2. PM₁₀

~~4.1.b.2.A. Annual arithmetic mean concentration of 50 micrograms per cubic meter (ug/m³), attained when the annual arithmetic mean concentration, as determined in accordance with Appendix N of 40 CFR Part 50, is less than or equal to 50 micrograms per cubic meter (50 ug/m³).~~

~~4.1.b.2.B. Average 24-hour concentration of 150 micrograms per cubic meter (ug/m³), attained when the 99th percentile 24-hour concentration, as determined in accordance with Appendix N of 40 CFR Part 50, is less than or~~

~~equal to 150 micrograms per cubic meter (150 ug/m³).~~

4.1.b.2.A. Annual Arithmetic Mean Concentration - 50 micrograms per cubic meter (ug/m³). 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 ug/m³.

4.1.b.2.B. Maximum 24 Hour Concentration - 150 micrograms per cubic meter (150 ug/m³). The standards are attained when the expected number of days per calendar year with a 24-hour average concentration above 150 ug/m³, as determined in accordance with Appendix K of 40 CFR 50, is less than or equal to one.

§45-8-5. Methods of Measurement.

5.1. PM_{2.5} concentrations shall be measured in the ambient air as particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers by:

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

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

5.2. PM₁₀ concentrations shall be measured in the ambient air as particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers by:

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

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

5.3. Sulfur dioxide concentrations shall be measured in the ambient air as sulfur dioxide by:

5.3.a. a reference method based on Appendix A 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.

§45-8-6. Inconsistency Between Rules.

In the event of any inconsistency between this rule and any other rule of the Director, the resolution of such inconsistency shall be based upon the application of the more stringent provision, term, condition, method, or rule.

ORIGINAL

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

In the matter of:

PUBLIC HEARING ON PROPOSED LEGISLATIVE RULE

45 CSR 8 " Ambient Air Quality Standards for Sulfur
Oxides and Particulate Matter."

Transcript of proceedings had at a public hearing in the above-styled matter taken by Missy L. Young, Certified Court Reporter and Commissioner in and for the State of West Virginia, at the West Virginia Division of Environmental Protection, Office of Water Resources', Conference Room, 1201 Greenbrier Street, East, Charleston, West Virginia, 25305, commencing at 6:04 p.m., on the 12th day of October, 1999, pursuant to notice.

Missy L. Young, C.C.R.
Post Office Box 13221
Sissonville, WV 25360
(304) 984-2300 or 540-8179

P R O C E E D I N G S

MS. CHANDLER: This public hearing will now come to order on this 12th day of October, 1999 at the West Virginia Division of Environmental Protection, Office of Water Resources' conference room located at 1201 Greenbrier Street, Charleston, West Virginia.

The purpose of the public hearing is to receive comments on the proposed rules filed in the Secretary of State's Office on September 1st and September 8, 1999 and noticed in the State Register on September 3rd and September 10, 1999. The proposed legislative rules are 45CSR8, 45CSR9, 45CSR13, and 45SCR24. The rules were noticed in a Class I legal advertisement in both the Charleston Daily Mail and Charleston Gazette, and notice was also sent to various individuals and organizations.

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

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

In order to obtain separate transcripts for each of the rules, the hearing procedure this evening

1 will be to introduce each rule individually, allow time
2 for oral comments and close the hearing for that
3 particular rule. Written comments for any rule may be
4 submitted at the end of this public hearing tonight. For
5 those of you wishing to make oral comments, a sign-up
6 sheet is in the back and please, sign up now, before I
7 take it up. Please limit your comments to five minutes.
8 Your comments will be made a part of the rulemaking
9 record.

10 The court reporter is Ms. Missy L. Young,
11 if anyone desires a transcript of this proceeding, please
12 contact Ms. Young at 984-2300.

13 45CSR8 - "Ambient Air Quality Standards
14 for Sulfur Oxides and Particulate Matter". The purpose of
15 this rule establishes ambient air quality standards for
16 sulfur oxides and particulate matter, equivalent to those
17 national primary and secondary ambient air quality
18 standards established by the U.S. Environmental Protection
19 Agency. For these proceedings, I'll just say U.S.EPA.

20 National primary ambient air quality
21 standards define levels of air quality which the
22 Administrator of the U.S. EPA judges are necessary, with
23 an adequate margin of safety, to protect the public
24 health. National secondary ambient are quality standards

1 define levels of air quality which the Administrator of
2 the U.S. EPA judges necessary to protect the public
3 welfare from any known or anticipated adverse effects of a
4 pollutant. Such standards are subject to revision, and
5 additional primary and secondary standards may be
6 promulgated as the Administrator of the U.S. EPA. deems
7 necessary to protect the public health and welfare.

8 In accordance with sections 108 and 109 of
9 the Clean Air Act (CAA). EPA reviewed the air quality
10 criteria and national ambient air quality standards
11 (NAAQS) for particulate matter (PM) and for ozone (O₃).
12 Based on these reviews, EPA revised the standards for both
13 classes of pollutants, and that was noticed July 18, 1997
14 in the Federal Register thereby necessitating the proposed
15 revisions the corresponding state counterpart rules.

16 The 1999 Legislature, by the passage of
17 House Bill No. 2533, authorized the promulgation of the
18 rule adopting the revised federal standards discussed
19 above. This rule was filed by the Director, June 1, 1999,
20 and was made effective August 30, 1999. However, as a
21 result of a federal court ruling on May 14, 1999, the
22 federal standard for PM_{2.5} was remanded to U.S EPA and the
23 standard for PM₁₀ was vacated, the case that sites that if
24 American Trucking Associations, Inc., et al. v. United

1 States Environmental Protection Agency, Case Nos. 97-1440
2 and 97-1441, United States Court of Appeals, District of
3 Columbia Circuit, May 14, 1999.

4 To be consistent with this ruling, the
5 rule being proposed by the Director suspends the PM_{2.5}
6 standard until further direction from either the U.S. EPA
7 or the U.S. Supreme Court of Appeals. The proposed rule
8 retains the standard for PM₁₀ since the sole basis for the
9 Court vacating the PM₁₀ standard was that the PM_{2.5}
10 standards could not co-exist without there being
11 essentially double regulation.

12 The floor is now open for public comment.
13 Please, identify yourself and your affiliation, if any
14 prior to making comments. And because of the number of
15 people, please, limit your comments to five minutes.

16 Mary Ellen O'Farrell, would you like to
17 comment on this.

18 MS. O'FARRELL: I have a comment on Reg
19 13.

20 MS. CHANDLER: Is there anyone that would
21 like comment on Reg 8?

22 Okay, nothing further this public hearing
23 for 45CSR8 is completed.

24 MR. EADES: Richard Eades, with the West

1 Virginia Citizens Action Group. 45CSR8 calls for
2 particulate matter, and I have only antidotal information
3 to go on, but I have lived in three major urban areas for
4 the last 16 years and have not seen, the drive pursuant to
5 particulate matter like I have here in Charleston in the
6 last nine months. On my home, shelving, on porch decks,
7 on cars. I am not aware how 45CSR8 actually deals with
8 that but antidotally, it's worse than the conditions that
9 I saw in the early 80's in D.C., the conditions I saw in
10 eastern Massachusetts in last 80's, and the conditions I
11 saw in research in part for the last 10 years in North
12 Carolina, clearly worse. And I say that from a stand
13 point of having been in practice as a environmental
14 professional since 1980, in the field of hydrogeology. I
15 hope that when these regulations move through the
16 Legislatature that every attempt is made to continue to
17 reduce particulate in our air.

18 MS. CHANDLER: Thank you, Mr. Eades.
19 Anyone else? Now, if there is nothing further, these
20 proceedings are concluded for 45CSR8.

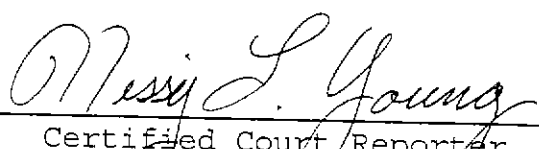
21 (WHEREUPON, the public hearing
22 was concluded.)

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

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
15th day of October 1999.



Certified Court Reporter
Commissioner for the State of West Virginia

My commission expires April 15, 2008.

Division of Environmental Protection

Public Hearing: DAO Rules 45CSR8, 45CSR9, 45CSR13 & 45CSR24 Time/Date: Oct. 12, 1999 6:00 pm

NAME	ADDRESS	COMMENT	
		YES	NO
1. Jack L Morstad	4C South Charleston Plant	☒	☐
2. William E. G. G. G.	1010 Valley Dr Char. WV 25302	☒	☐
3. William E. G. G. G.	302 Woodbridge Ln Char. 25311	☒	☐
4. William E. G. G. G.	1425 Quamian St #5 Char. 25301-3009	☒	☐
5. William E. G. G. G.		☐	☐
6. Tim Maland	4450 W 313 Wg St. E Charleston	☐	☒
7. Norrell Bollic	GE Plastics PO Box 68 Washington WV 26181	☐	☒
8. Jan Nirod	44-DEF #10 McTearline Rd, Nitro	☐	☐
9. Jeri Hunt	412 3rd St #201 Char. WV 25304	☒	☐
10. Peter Hart	" "	☐	☐
11. Tony Bennett	DEP-OMG	☐	☒
12. Rick Wilson	NSES Consultants, PO 110, Clarksburg WV 26302	☐	☒
13. Debbie Farnell	Steel Chemical Solvents & Apple Grove, WV 25308	☒	☐
14. Peggy Bergard	1544 2nd St Charleston WV 25311	☒	☐
15. Denise Poole	103 Oakland Ave - Huntington WV 25705	☒	☐



1ammy
Karen

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

OCT 12 P 1:59
OFFICE OF AIR QUALITY

OCT 5 1999

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

Dear Mr. Kropp: *E. Kropp*

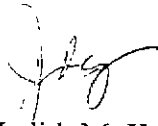
Thank you for providing us with the opportunity to comment on the proposed revisions to 45CSR8 "Ambient Air Quality Standards for Sulfur Oxides and Particulate Matter." The basic proposal suspends the air quality standard for $PM_{2.5}$ until further direction from the Environmental Protection Agency (EPA) or the U.S. Supreme Court of Appeals. In addition, the regulation maintains the 1997 PM_{10} air quality standard. The briefing document, provided in conjunction with the proposed revisions, indicates that these actions are consistent with the federal court ruling of May 14, 1999 in the case of American Trucking Associations, Inc., et al. v. United States Environmental Protection Agency. However, the actions in regard to PM_{10} are not consistent with this ruling. During a brief conversation with your staff on September 29, 1999, EPA expressed the following concerns regarding West Virginia's interpretation of the court decision.

The court vacated the 1997 PM_{10} air quality standard, and the PM_{10} standard which was in existence prior to the 1997 standard is once again the National Ambient Air Quality Standard for PM_{10} . The vacated 1997 standard is slightly less stringent than the most current standard. Therefore, West Virginia is proposing to have an air quality standard that is less stringent than the current federal air quality standard for this criteria pollutant. A state may not have a standard for PM_{10} which is less stringent than the federal standard. In order to be consistent with the court ruling, West Virginia should remove the 1997 standard and retain the preexisting PM_{10} standard.

In one portion of the briefing document, the state indicates that it is being consistent with the court ruling because "the sole basis for the court vacating the PM_{10} standard was that the $PM_{2.5}$ and PM_{10} standards could not co-exist without there being essentially double regulation." This interpretation of the ruling is not correct. The court indicated there could be coexisting $PM_{2.5}$ and PM_{10} standards, but the court objected to the way in which they were determined. Information regarding the court's view on the PM_{10} standards will be provided to your staff under separate cover.

Please include this letter and the enclosures in the public record on the proposed rule revision. Ruth Knapp of my staff has been assigned to this project. She may be reached at (215) 814-2191. If you have any questions, please contact Ruth Knapp or Walter Wilkie, Acting Chief, Technical Assessment Branch at (215) 814-2150.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Katz', with a stylized flourish at the end.

Judith M. Katz, Director
Air Protection Division

cc: John Benedict



Tammy
Karen

Karen

WEST VIRGINIA
OFFICE OF AIR QUALITY

1999 OCT 12 P 4: 01

10/12/99

MANUFACTURERS ASSOCIATION

2001 Quarrier Street, Charleston, WV 25311

Telephone: (304) 342-2123

FAX: (304) 342-4552

wvma@wvma.com

October 12, 1999

Mr. Edward L. Kropp, Chief
WV Division of Environmental Protection
Office of Air Quality
1558 Washington Street, East
Charleston, West Virginia 25311-2599

Re: 45 CSR 8, "Ambient Air Quality Standards for Sulfur Oxides and Particulate Matter"; and 45 CSR 9, "Rules Pertaining to Ambient Air Quality Standards for Carbon Monoxide and Ozone".

Dear Chief Kropp:

These comments in support of the proposed amendments to the two above-listed rules are submitted on behalf of the West Virginia Manufacturers Association Air Team. The WVMA, with over 200 member companies, forms the core of the industrial and manufacturing community of West Virginia. As such, we take a vital interest in the regulations governing air quality in West Virginia.

As to Regulation 8, we support the Office of Air Quality's action to suspend the $PM_{2.5}$ standard until issues related to that standard are resolved by EPA or the US Supreme Court of Appeals subsequent to the May 14, 1999 ruling of the United States Court of Appeals for the District of Columbia Circuit in American Trucking Association, Inc., et al. v. United States Environmental Protection Agency (Case Nos. 97-1440 and 97-1441). Because the Court remanded the $PM_{2.5}$ standard it makes no sense to have that standard independently enforceable in West Virginia or any other state until those issues are resolved. However, we do support the OAQ's action in retaining the PM_{10} standard since it would then not be inconsistent with the suspended $PM_{2.5}$ standard. Furthermore, retention of this PM_{10} standard will provide ongoing regulation of fine particulates while revisions to the standard are being addressed by EPA and the courts.

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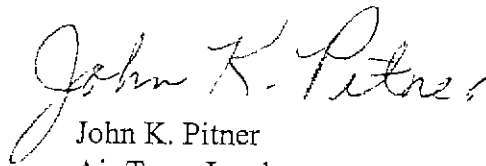
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Mr. Edward L. Kropp, Chief
October 12, 1999
Page 2

As to Regulation 9, dealing with standards for carbon monoxide and ozone, we also support the action of the Director to suspend the 8-hour ozone standard until further direction from either the EPA or the US Supreme Court of Appeals. The 8-hour ozone standard was also remanded to EPA and declared to be unenforceable by the United States Court of Appeals for the District of Columbia Circuit on May 14, 1999 in the ATA decision referenced above. Accordingly, it would be inconsistent with state policy and law to enforce a standard in West Virginia that is not enforceable on the federal level. We therefore support the action of the OAQ to suspend this standard while these issues are resolved on the federal level. We note that precursor pollutants will continue to be controlled by the OAQ under independent regulations regarding volatile organic compounds and nitrogen oxides. Therefore, this suspension of the 8-hour ozone standard will not result in a lack of appropriate control of those pollutants.

We appreciate this opportunity to express our support for the proposed actions of the Director and the Office of Air Quality.

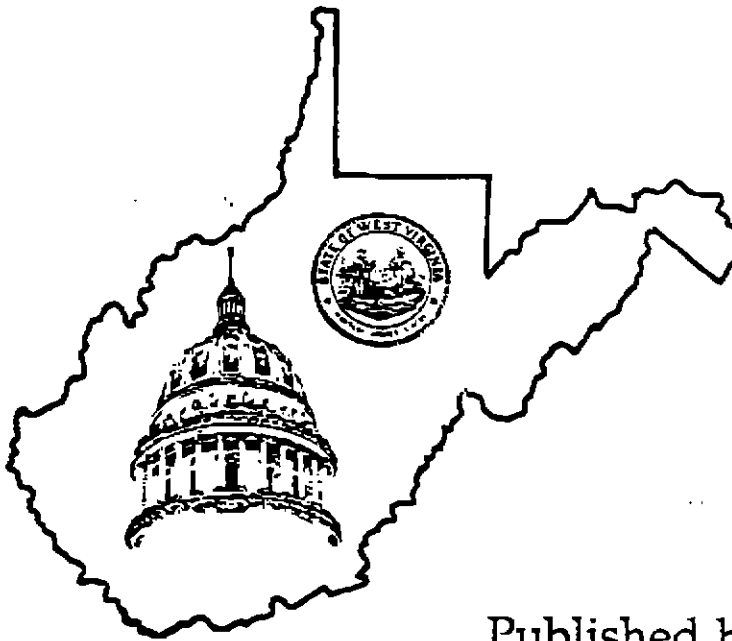
Sincerely,

A handwritten signature in cursive script that reads "John K. Pitner".

John K. Pitner
Air Team Leader
West Virginia Manufacturers Association

JKP/kbp/lmw

cc: WVMA Air Team Members
Karen S. Price, President, WVMA



WEST VIRGINIA REGISTER

Published by Ken Hechler, Secretary of State

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Volume XVI

Issue 36

September 3, 1999

Pages 1588-1633

A Weekly Publication

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ADMINISTRATIVE LAW DIVISION

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OCT 17 1999

FORM #1

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Division of Environmental Protection, Office of Air Quality TITLE NUMBER: 43

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

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 Dioxide

and Particulate Matter"

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

TITLE OF RULE BEING PROPOSED: _____

DATE OF PUBLIC HEARING: October 12, 1999 TIME: 6:00 p.m.

LOCATION OF PUBLIC HEARING: Office of Water Quality - Conference Room

1201 Chesapeake Street

Charleston, West Virginia 25311

COMMENTS LIMITED TO ORAL, WRITTEN, BOTH ☒

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: Edward L. Kemp, Chief

The Department requests that persons wishing to make

comments at the hearing make an effort to submit written

comments in order to facilitate the review of these comments

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

Charleston, WV 25311-2399

Office of Air Quality

1538 Washington Street East

ATTACH A BRIEF SUMMARY OF YOUR PROPOSAL.

Edward L. Kemp
Ambassador-SecretaryLEGISLATIVE

WEST VIRGINIA

SECRETARY OF STATE

KEN HETTLER

ADMINISTRATIVE LAW DIVISION

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OCT 17 1999

FORM #1

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

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

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

AMENDMENT TO AN EXISTING RULE: YES ☒ NO ☐

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 9

TITLE OF RULE BEING AMENDED: "Rules Pertaining to Ambient Air Quality Standards
for Carbon Monoxide and Ozone"

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

TITLE OF RULE BEING PROPOSED: _____

DATE OF PUBLIC HEARING: October 12, 1999 TIME: 6:00 p.m.

LOCATION OF PUBLIC HEARING: Office of Water Quality - Conference Room

1201 Chesapeake Street

Charleston, West Virginia 25311

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

Office of Air Quality

1538 Washington Street East

Charleston, WV 25311-2399

ATTACH A BRIEF SUMMARY OF YOUR PROPOSAL.

Edward L. Kemp
Ambassador-Secretary



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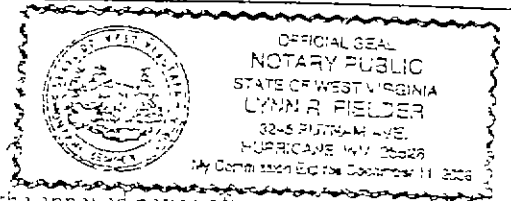
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			671138001			9.88	5.83	57.55	
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			671138001			9.88	5.83	57.55	115.10
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State of West Virginia.

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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 HEARING
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Subscribed and sworn to before me this 8 day of September
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SEP 11 1999
10:27 AM '99

NOTICE OF
PUBLIC HEARING AND
PUBLIC COMMENT
PERIOD

On Tuesday, October 12, 1999 beginning at 6:00 p.m., the West Virginia Division of Environmental Protection, Office of Air Quality will hold a public hearing on proposed revisions to the following legislative rules:

45CSR8 "Ambient Air Quality Standards for Sulfur Oxides and Particulate Matter"

45CSR9 "Rules Pertaining to Ambient Air Quality Standards for Carbon Monoxide and Ozone"

45CSR13 "Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants, Notification Requirements, General Permits, and Procedures for Evaluation"

45CSR24 "To Prevent and Control Emissions from Hospital/ Medical/ Infectious Waste Incinerators"

Upon authorization and promulgation of revisions to 45CSR8, 45CSR9 and 45CSR13, the Office of Air Quality will seek federal approval of the rule change by the U.S. Environmental Protection Agency for inclusion in the State Implementation Plan for the Federal Clean Air Act.

Upon authorization and promulgation of revisions to 45CSR24, the rule will be submitted to the U.S. Environmental Protection Agency for approval as part of the State's Plan for Hospital/ Medical/ Infectious Waste Incinerators, pursuant to section 111(d) of the Federal Clean Air Act, and also included in the State's request for delegation of authority to implement and enforce 40 CFR Part 60 Subpart E.

The hearing will be held at the Division of Environmental Protection, Office of Water Quality - Conference Room, 1201

and is open to the public. Written and oral comments will be accepted until the close of the hearing on October 12th and will be made a part of the rulemaking record. Comments will not be accepted by e-mail. The public may submit written comments by mail, facsimile (304-538-3287) or other delivery to the Office of Air Quality through October 12th for inclusion in the rulemaking record at the following address.

Edward K. Kropp,
Chief
Office of Air Quality
1358 Washington St., E.
Charleston, WV 25311-2599

Comments submitted by mail must be postmarked by October 12, 1999. Copies of the proposed legislative rules for 45CSR8, 45CSR9, and 45CSR24 will be available for public review on or before September 3, 1999 at the Office of Air Quality's Charleston office at the above address. Copies of the proposed legislative rule for 45CSR13 will be available for public review on or before September 8, 1999, at the same address.

45CSR8

AMBIENT AIR QUALITY STANDARDS FOR SULFUR OXIDES AND PARTICULATE MATTER

RESPONSE TO COMMENTS

On October 12, 1999, the Division of Environmental Protection (DEP), Office of Air Quality (OAQ) held a public hearing to accept oral comments on proposed changes to 45CSR8 – “Ambient Air Quality Standards for Sulfur Oxides and Particulate Matter.” The OAQ received written comments on the rule from the West Virginia Manufacturer’s Association (WVMA) and the United States Environmental Protection Agency (U. S. EPA) Region III. In addition, a representative of the West Virginia Citizens’ Action Group (WVCAG) commented at the public hearing concerning OAQ’s proposed 45CSR8. The OAQ has summarized the comments and provides the following responses.

I. Commenter: West Virginia Manufacturer’s Association

COMMENT A. *The commenter was generally supportive of OAQ’s proposed revisions and expressly supported suspension of the $PM_{2.5}$ standard as well as retention of a PM_{10} standard.*

RESPONSE A. OAQ acknowledges WVMA’s support. For reasons outlined in response to U.S. EPA’s comments below, OAQ is not retaining the PM_{10} standard to which we believe WVMA refers (i.e., the revised 1997 standard). Rather, OAQ has determined that it is more appropriate to retain the previous PM_{10} standard.

II. Commenter: United States Environmental Protection Agency

COMMENT A. *The commenter asserts that when the court vacated the 1997 PM_{10} standard, the previous PM_{10} standard became effective once again. U.S. EPA notes that states cannot adopt a less stringent air quality standard than the federal standard and suggests that OAQ remove the 1997 standard and reinstate the preexisting PM_{10} standard. The commenter also committed to provide supplementary information to help OAQ staff further evaluate the comments.*

RESPONSE A. The briefing document filed with the proposed rule describes OAQ’s rationale for retaining the 1997 PM_{10} standard. OAQ never received the supplemental materials mentioned in U.S. EPA’s comments; however, based upon U.S. EPA’s formal comments, OAQ is reinstating the previous (prior to 1997) PM_{10} air quality standard, (i.e., the standard contained in 45CSR8,

effective May 1, 1979).

III. Commenter: West Virginia Citizens' Action Group

COMMENT A: *The commenter made no specific comments about any of the provisions of 45CSR8. He offered no suggested additions or deletions. He opined that particulates were worse here than in other states. He advocated that every attempt be made to continue reductions of particulates in the air.*

RESPONSE A: OAQ believes that adoption of ambient air quality standards is the cornerstone for control of all the criteria air pollutants. Further, OAQ has adopted, and enforces, several air quality rules that regulate airborne particulates, directly and/or indirectly, e.g., 45CSR 2, 5, 6, 7, 8, 13, that regulate boilers, coal handling, open burning, manufacturing processes, ambient standards, and permitting, respectively.