

**WEST VIRGINIA  
SECRETARY OF STATE  
JOE MANCHIN, III  
ADMINISTRATIVE LAW DIVISION**

Form #1

Do Not Mark In This Box

**FILED**

2001 JUN -6 P 4: 55

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

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

AGENCY: WVDEP-Division 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: "Ambient Air Quality Standards for Carbon Monoxide and Ozone"

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

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

DATE OF PUBLIC HEARING: July 12, 2001 TIME: 6:00 P.M.

LOCATION OF PUBLIC HEARING: Division of Air Quality

7012 MacCorkle Avenue, SE

Charleston, WV 25304-2943

COMMENTS LIMITED TO: ORAL , WRITTEN , BOTH

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: John A. Benedict, Deputy 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.

Division of Air Quality

7012 MacCorkle Avenue, SE

Charleston, WV 25304-2943

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

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

Michael O. Callahan  
Authorized Signature

RCB

\$6.00

## DEPARTMENT OF ENVIRONMENTAL PROTECTION

### BRIEFING DOCUMENT

**Rule Title:** 45CSR9 - "Ambient Air Quality Standards for Carbon Monoxide and Ozone"

**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 carbon monoxide and ozone, 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 (Act), U.S. EPA reviewed the air quality criteria and national ambient air quality standards (NAAQS) for ozone (O<sub>3</sub>) and particulate matter (PM). Based on these reviews, the U.S. EPA revised the standards for both classes of pollutants in 1997. Significant controversy and legal challenges ensued, resulting in a fairly complex chain of actions involving all three branches of the federal government: executive, legislative and judicial.

Ozone and related pollutants have long been recognized, in both clinical and epidemiological research, to affect public health. The ozone standard would provide protection for children and other at-risk populations against a wide range of O<sub>3</sub>-induced health effects, including decreased lung function (primarily in children active outdoors), increased respiratory symptoms (particularly in highly sensitive individuals), hospital admissions and emergency room visits for respiratory causes (among children and adults with pre-existing respiratory disease such as asthma), inflammation of the lung, and

**Briefing Document****Page 2**

possible long-term damage to the lungs.

As explained above, U.S. EPA revised the NAAQS for particulate matter (PM) and for ozone (O<sub>3</sub>) (July 18, 1997 *Federal Register*) thereby necessitating revisions to the corresponding state counterpart rules. 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 Secretary (now Secretary) 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 ozone was remanded to 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.)

To be consistent with this ruling, the Secretary (now Secretary) proposed revisions to the state rule which would suspend the ozone standard until further direction was received from either the U.S. EPA or the U.S. Supreme Court of Appeals. The 2000 Legislature, by the passage of House Bill No. 4223, authorized the promulgation of an agency rule which removed the contested 8-hour standard while reserving a section for a subsequent standard. This rule was filed by the Secretary (now Secretary) May 19, 2000, and was made effective June 1, 2000. Subsequently, U.S. EPA responded to the Circuit Court of Appeals ruling, in part, by reinstating the previous 1-hour ozone standard through a final rule, "Rescinding Findings That the 1-Hour Ozone Standard No Longer Applies in Certain Areas" (65 FR 140, beginning at 45182) effective on October 18, 2000.

Upon appeal, the U.S. Supreme Court ruled on specific issues related to the 8-hour ozone standards (See Whitman v. American Trucking Associations, Inc., et al., Case Nos. 99-1257 and 99-1426, U.S. Supreme Court, February 27, 2001). The cases were characterized by the Court as "unusually complex". The ruling validated U.S. EPA's authority to set the revised standards but held that "the implementation policy [is] unlawful" and "the EPA's interpretation of that Part [Part D of Title I] is unreasonable". Therefore, although the 8-hour ozone standard has not been invalidated, the U.S. Supreme Court has essentially ruled that it cannot be implemented under U.S. EPA's present interpretation. Consequently, the Secretary proposes to adopt the 1-hour ozone standard pursuant to U.S. EPA's October 18, 2000 Rule and will defer adoption of the more stringent 8-hour standard until the implementation issue has been resolved by U.S. EPA and finally adjudicated.

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

The proposed rule amendments are being made to conform to the federal counterpart rule, U.S. EPA's October 18, 2000 Rule (1-hour Ozone Standard

**Briefing Document**  
**Page 3**

reinstatement). Therefore, no determination of stringency is required. As discussed above, another federal counterpart also exists, U.S. EPA's July 18, 1997 Rule (8-hour Ozone Standard), which has been subject to prolonged litigation. Because the 1-hour standard is the only one that can be legally implemented at present, it is the appropriate counterpart against which any comparison should be made for the purpose of a stringency finding.

**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 29, 2001 meeting, the Environmental Protection Advisory Council reviewed and discussed this rule. Their comments are contained in the attached minutes.

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

FILED

2001 JUN -6 P 4:55

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

SERIES 9  
AMBIENT AIR QUALITY STANDARDS FOR  
CARBON MONOXIDE AND OZONE

**§45-9-1. General.**

1.1. Scope. -- 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.

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. -- ~~May 19, 2000.~~

1.4. Effective Date. -- ~~June 1, 2000.~~

1.5. Former Rules. -- This legislative rule amends 45CSR9 - "~~Rules Pertaining to Ambient Air Quality Standards for Carbon Monoxide and Ozone~~" which was filed on ~~June 1, 1999~~ May 19, 2000 and became effective on ~~August 30, 1999~~ June 1, 2000.

**§45-9-2. Anti-Degradation Policy.**

2.1. In the best interests of the State of West Virginia, it is the objective of the ~~Director~~ 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 ~~Director~~ 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 such 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~~ 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.

**§45-9-3. 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', shall have the meaning ascribed to it in W. Va. Code §22-5-2.

~~3.3. "Ozone" means the triatomic oxygen molecule (O<sub>3</sub>), a very reactive form of oxygen.~~

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

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

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

#### §45-9-4. Ambient Air Quality Standards.

4.1. The following ambient air pollutant concentrations shall not be exceeded:

##### 4.1.a. Carbon Monoxide

4.1.a.1. Maximum eight (8) hour concentration, ten (10) milligrams per cubic meter (9 ppm) - not to be exceeded more than once per year.

4.1.a.2. Maximum one (1) hour concentration, forty (40) milligrams per cubic meter (35 ppm) - not to be exceeded more than once per year.

##### 4.1.b. Ozone

4.1.b.1. ~~[Reserved]~~ The level of the one (1) hour primary and secondary ambient air quality standards for ozone is 0.12 parts per million (ppm) (235 micrograms per cubic meter [ $\mu\text{g}/\text{m}^3$ ]).

4.1.b.2. The standard is attained when the expected number of days per calendar year with maximum hourly average concentrations above 0.12 parts per million (ppm) (235 micrograms per cubic meter [ $\mu\text{g}/\text{m}^3$ ]) is equal to or less than one

(1), as determined by Appendix H to 40 CFR Part 50.

#### §45-9-5. Methods of Measurement.

5.1. Carbon Monoxide concentrations shall be measured in the ambient air by:

5.1.a. a reference method based on Appendix C 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. 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.

~~5.2.a. [Reserved]~~

□  
APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 45CSR9 - "Ambient Air Quality Standards for Carbon Monoxide and Ozone"

Type of Rule:  X  Legislative          Interpretive          Procedural

Agency: Office of Air Quality

Address: 7012 MacCorkle Avenue, SE

Charleston, WV 25304-2943

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<b>ESTIMATED TOTAL COST</b>	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
<b>PERSONAL SERVICES</b>	0	0	0	0	0
<b>CURRENT EXPENSE</b>	0	0	0	0	0
<b>REPAIRS &amp; ALTERATIONS</b>	0	0	0	0	0
<b>EQUIPMENT</b>	0	0	0	0	0
<b>OTHER</b>	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 ozone to conform to those promulgated by the U.S. EPA under the federal Clean Air Act, as amended. Promulgation of this rule by the Legislature is necessary for the State to fulfill its responsibilities under the Clean Air Act.

Rule Title: 45CSR9 - "Ambient Air Quality Standards for Carbon Monoxide and Ozone"

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: \_\_\_\_\_

Signature of Agency Head or Authorized Representative:

\_\_\_\_\_

# WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION

## ADVISORY COUNCIL MEETING – MINUTES

Tuesday, May 29, 2001 ~ 1:00 p.m.  
Second Floor Conference Room - Nitro

### Attendees:

#### Advisory Council Members:

Michael O. Callaghan – Chairman  
Lisa Dooley  
Jackie Hallinan  
Larry Harris  
Bill Raney  
Rick Roberts  
Bill Samples

#### DEP:

Bill Adams  
John Ailes  
Dave Bassage  
John Benedict  
Bill Brannon  
Laura Crowder  
Mike Dorsey  
Lewis Halstead

Randy Huffman  
Pam Nixon  
Ken Politan  
Charlie Sturey  
Allyn Turner  
Dave Watkins  
Karen Watson  
Mike Zeto

#### CITIZENS:

Victoria Moore  
Elaine Purkey  
Freda Williams

The meeting was called to order at 1:00 p.m. by Chairman Michael O. Callaghan.

#### Welcome/Opening Remarks - Chairman Callaghan:

Chairman Callaghan opened the meeting by announcing that he had reorganized the West Virginia Department of Environmental Protection (WV DEP) and consolidated certain offices into four divisions: Division of Mining and Reclamation, Matt Crum, Director; Division of Waste Management, Ken Ellison, Director; Division of Water

Resources, Allyn Turner, Director; and Division of Air Quality, Director position currently vacant. Other appointments by Chairman Callaghan include Dave Bassage, Coordinator of Innovative Policy; Cap Smith, Head of Special Projects; and John Ailes, Special Advisor for Mining Affairs. Mr. Callaghan distributed a copy of May 29<sup>th</sup> news release, announcing the restructuring (see attached).

### **2001 Legislative Session Overview:**

William E. Adams, Jr., Deputy Secretary, provided an overview of the 2001 legislative session. Mr. Adams commented that DEP was successful in getting all but two of their rules passed during the session, and he distributed a copy of a news release covering the scope of legislative action regarding DEP's rules (news release attached).

### **Presentation of 2002 Proposed Legislative Rules:**

#### **Office of Air Quality -**

John Benedict presented rules 45CSR1 and 45CSR26 to the Council.  
Karen Watson presented rules 45CSR 8, 9, 15, 16, 18, 25, 33 and 34.

#### **Office of Mining and Reclamation -**

Lewis Halstead presented rules 38CSR2 and 38 CSR 4.

#### **Office of Waste Management -**

Mike Dorsey presented rule 33CSR20.

#### **Office of Water Resources -**

Ken Politan presented rules 47CSR5A and 47CSR30.  
David Watkins presented rules 47CSR57B and 47CSR13.  
Allyn Turner - Discussed the anti-degradation legislation passed during the 2001 legislative session and the need to file any proposed 2002 rules after July 1, 2001 because the authority for the promulgation of this rule will not vest with the DEP until then.

#### **Environmental Enforcement -**

Mike Zeto presented the rule for Administrative Proceedings and Civil Penalty Assessment.

Upon conclusion of rules presentations, Randy Huffman, DEP Assistant Secretary, thanked everyone for coming and commented that the rules will be filed with the Secretary of State's office by Wednesday, June 06, 2001, for the thirty-day comment period and then go to public hearings. Cindy Lawson read the 2002 rules filing guideline and deadline dates. Mr. Huffman asked for guidance from the council members. A comment was made that the rules should be in the hands of the Advisory Council a week preceding the meeting and Mr. Huffman stated that this was the goal of the agency. With the legislative session beginning 30 days later this year, however, the process was delayed as an overlapping of final filing and pre-filing for 2002 could not be prevented.

Bill Raney, Council Member, made a motion that the Advisory Council acknowledges the submission and presentation of the 2002 rules. William Samples, Council Member, seconded the motion.

A motion to adjourn the meeting was made by Bill Raney and seconded by Larry Harris, Council Member. The meeting adjourned 3:50 p.m.

Attachments



# News Release

Department of Environmental Protection  
*West Virginia*

Release: May 29, 2001  
For Information: (304) 759-0515

## DEP program offices consolidated from eight to four; Crum to head mining office

CHARLESTON — The state's environmental protection agency is being reorganized into four primary regulatory divisions and a former federal prosecutor is taking over the mining office, the state's foremost environmentalist said Tuesday.

Under the change, four office heads, who will be called division directors, will report directly to DEP Secretary Michael O. Callaghan, the Cabinet secretary said.

They are directors of the Division of Air Quality, Division of Water Resources, Division of Waste Management and Division of Mining & Reclamation.

The reorganization takes in the current program offices of Abandoned Mine Lands & Reclamation, Air Quality, Environmental Remediation, Explosives and Blasting, Mining and Reclamation, Oil & Gas, Waste Management and Water Resources.

"These changes are long overdue and are necessary to make the entire structure of the new Department of Environmental Protection more manageable," Callaghan said.

The Legislature at the request of Gov. Bob Wise this year elevated the agency from the Division of Environmental Protection to department status and made Callaghan a Cabinet-level secretary.

"I want the agency head to be immediately accessible to those who are in critical decisionmaking positions," Callaghan said. "This is needed to respond to environmental problems promptly and for the complex process of issuing permits. These changes give the division heads more authority than the old chiefs had and I hope groups them together as environmental protectors rather than as eight entities doing their individual thing."

Callaghan also announced he has named Matthew B. Crum, an environmental lawyer with the U.S. Justice Department in Washington, as director of the mining office, taking over for John Ailes, who has been acting chief.

Crum, 35, who lives in Fairfax, Va., has been a lawyer in the environmental enforcement section for the Justice Department since 1998. He previously worked for the Division of Environmental Protection and The Nature Conservancy.

Ailes has been named as a special adviser for mining affairs and will report directly to Callaghan.

"Matt incorporates all the leading assets the agency needs to move the mining regulatory and permitting program forward," Callaghan said. "John Ailes will serve equally well in a key advisory capacity to the secretary. I am building a new mining program and am looking at least a decade into the future to set those plans in place."



# News Release

Department of Environmental Protection  
*West Virginia*

Release: May 29, 2001  
For Information: (304) 759-0515

Reorg 2-2-2

Ken Ellison, who has been chief of the Office of Remediation, will become director of the waste office. Former Office of Waste Management Chief Cap Smith is joining Callaghan's staff as head of special projects. Office of Water Resources Chief Allyn Turner takes over the water division.

Callaghan is seeking a director for the Air Division after Skipp Kropp, former chief of the Office of Air Quality, submitted his resignation last week.

Dr. Dee Ann Staats, Ph.D, rounds out the staff reorganization. DEP has suffered for years by the lack of a formal science adviser, particularly in the areas over which Ellison will have control. Staats is being hired in the newly created position of science adviser and will deal primarily with Ellison's office.

Staats, 44, of South Charleston, earned an undergraduate degree in chemistry from West Virginia Wesleyan in 1979 and her doctorate in pharmacology toxicology from West Virginia University in 1987.

Callaghan has been promising changes in the top management of DEP since he took over the agency Feb. 13.

"This agency long has failed to adequately complete its mission," Callaghan said. "It has been plagued by faltering, indecision and a lack of self-confidence. The management structure has failed to meet the expectations and output of the 800 fine employees who have made every effort to do the right thing for the agency and properly perform its mission. It is time for management to support the effort of these quality employees."

Earlier, Callaghan named general counsel Bill Adams as his sole deputy secretary, eliminating two other deputy positions. He also named former Deputy Randy Huffman as assistant secretary.

Continuing to report directly to Callaghan will be Environmental Advocate Pam Nixon, Innovative Policy Director Dave Bassage, Enforcement Coordinator Mike Zeto, and the Public Information Office.

**Department of  
Environmental Protection**

**SECRETARY**  
*Michael Callaghan*

DRAFT  
5/23/01

**Asst. Secretary**  
*Randy Huffman*

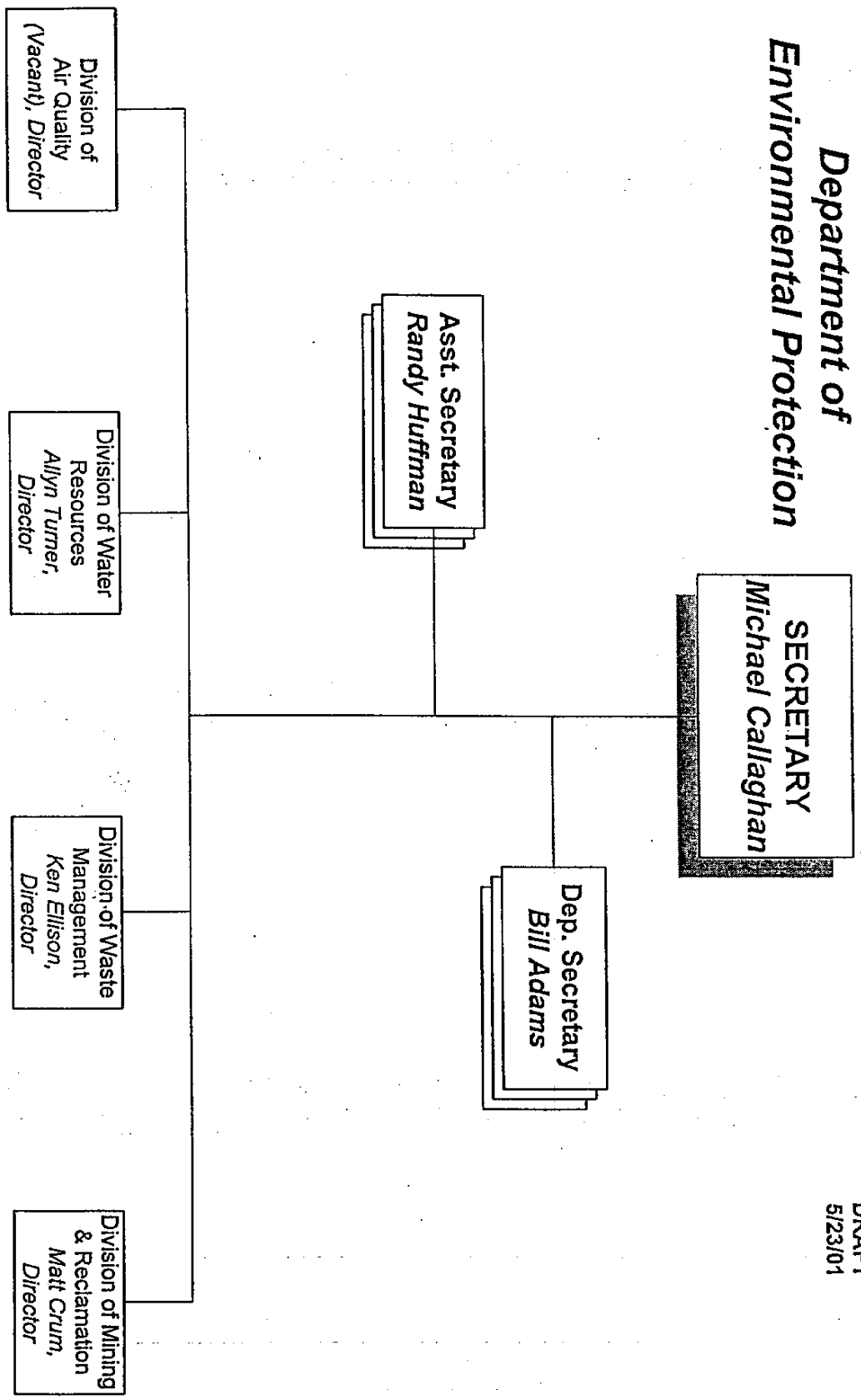
**Dep. Secretary**  
*Bill Adams*

**Division of  
Air Quality**  
*(Vacant), Director*

**Division of Water  
Resources**  
*Alynn Turner,  
Director*

**Division of Waste  
Management**  
*Ken Ellison,  
Director*

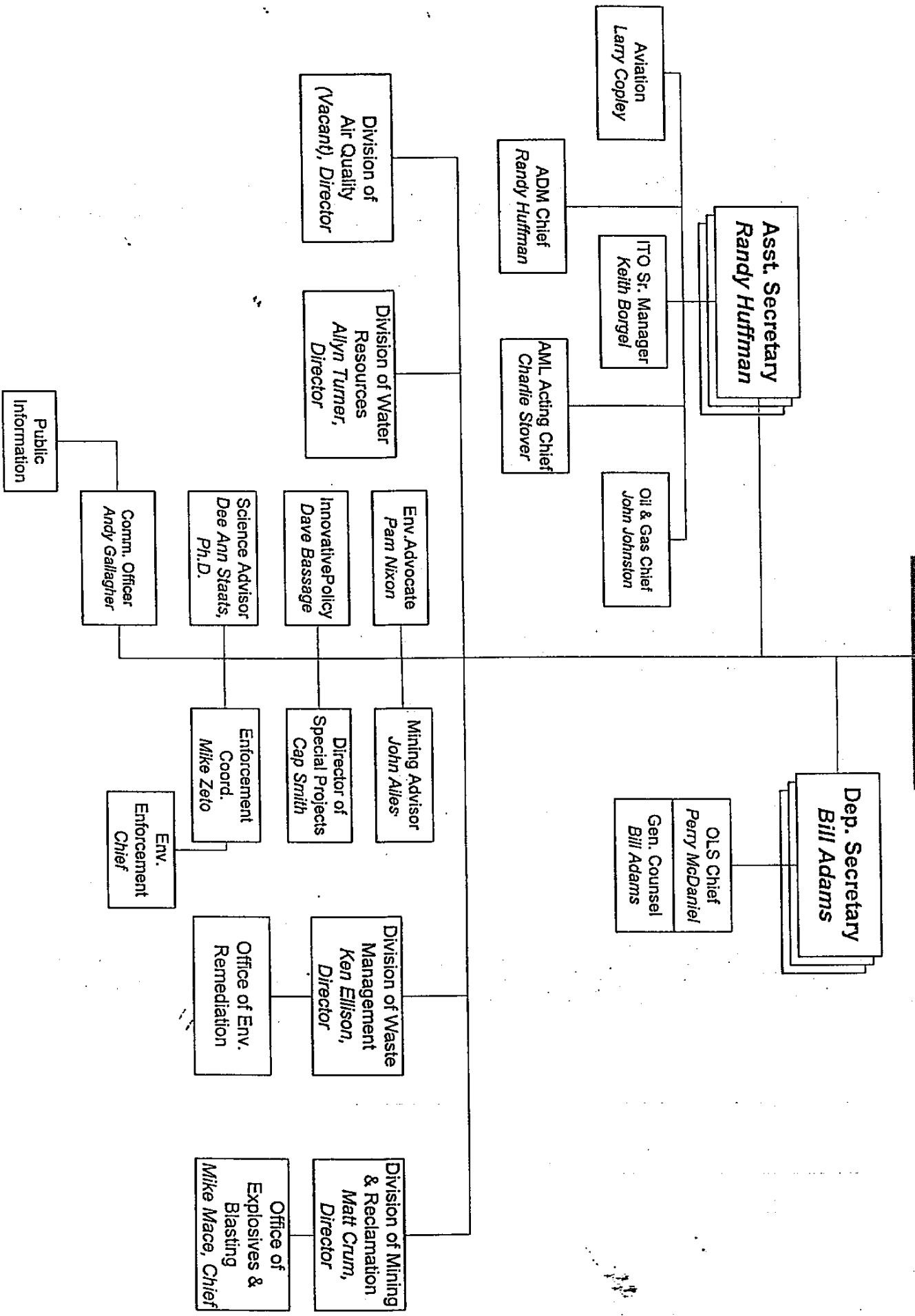
**Division of Mining  
& Reclamation**  
*Matt Crum,  
Director*



# Department of Environmental Protection

**SECRETARY**  
Michael Callaghan

DRAFT  
5/23/01





# News Release

Department of Environmental Protection  
**West Virginia**

Release: May 29, 2001  
For Information: (304) 759-0515

## Justice Department environmental lawyer to head up the DEP's mines office

**NITRO** — An environmental lawyer with the U.S. Department of Justice is taking over West Virginia's mining regulatory program, Department of Environmental Protection Secretary Michael O. Callaghan said Tuesday.

Matthew B. Crum, named chief of the Office of Mining and Reclamation, begins work June 11. He replaces John Ailes, who becomes a special adviser to Callaghan, focusing on mining issues.

Crum, 35, who lives in Fairfax, Va., has been a lawyer in the environmental enforcement section for the Justice Department since 1998. He previously worked for the Division of Environmental Protection and The Nature Conservancy.

He was lead counsel representing the federal government in the prosecution of civil enforcement cases under the Clean Water Act; the Clean Air Act; the Resource Conservation and Recovery Act and the Comprehensive Environmental Response, Compensation and Liability Act.

"Matt incorporates all the leading assets the agency needs to move the mining regulatory and permitting program forward," Callaghan said. "We are extremely fortunate to attract a person of his ability and character to head this program, which has seen too much turbulence in recent years.

"I believe Matt will give the program the stability it needs to help Governor Wise fulfill his mission for West Virginia," Callaghan said.

"I recognize that the department is facing several complex and contentious issues regarding the mining program," Crum said. "I look forward to returning to the agency to directly address these challenges. My family and I are very pleased to be coming back to the state of West Virginia."

Crum also has been involved in negotiations with the regulated community to resolve environmental enforcement issues, with emphasis on the prevention of illegal discharge of pollutants into waterways, the improper handling or storage of hazardous wastes and the unpermitted emission of airborne contaminants; negotiations designed to resolve conflict with corporations and individuals without compromising the integrity of the environment.

He has been involved in the management of litigation teams consisting of U.S. Environmental Protection Agency regional counsel and technical personnel.

From 1994 to 1997, Crum was a deputy chief for the Office of Legal Services for the former Division of Environmental Protection.



# News Release

Department of Environmental Protection  
*West Virginia*

Release: May 29, 2001  
For Information: (304) 759-0515

Crum 2-2-2

He served as lead counsel before circuit courts and administrative tribunals regarding enforcement actions against numerous corporations and municipalities. He also defended agency permits.

In 1996, Crum was an acting deputy attorney general in Charleston and served as supervisor of operations of the energy and environment division. He was in the environmental and litigation departments of the Charleston law firm of Robinson & McElwee from 1991 to 1994.

Crum and Perry McDaniel, head of the DEP legal office, were on opposite sides during a longtime dispute over licensing of a pulp mill at Apple Grove on the Ohio River. The proposal eventually was abandoned. Crum, who was working for the DEP at the time, was defending the agency's issuance of the permit. McDaniel, who represented the challengers, opposed it.

"I thought he was fair and I got along fine with him," McDaniel said. "I believe Matt is a good choice to head up this important program and I look forward to working with him."

Crum won commendations in 1997 from the U.S. Attorney General for outstanding performance and invaluable service to the Justice Department relating to environmental enforcement and from the U.S. Environmental Protection Agency for environmental enforcement.

He previously served as director of development and communications for The Nature Conservancy of West Virginia in 1997.

Crum is a 1991 graduate of Washington and Lee University's College of Law and holds a political science undergraduate degree from Virginia Tech.

-30-



# News Release

Department of Environmental Protection  
*West Virginia*

Release: May 29, 2001  
For Information: (304) 759-0515

## Science adviser position created and Staats added to staff

CHARLESTON – To beef up the science component of the Department of Environmental Protection, a toxicologist is being added to the agency staff, Cabinet Secretary Michael O. Callaghan said Tuesday.

“I am very pleased to announce Doctor Dee Ann Staats is joining the staff on June 1,” Callaghan said. She is a Ph.D.

“She will be an invaluable addition to help us with a number of complex health issues,” Callaghan said. “She will be the science adviser.” It is a newly created position attached to the secretary’s staff. Callaghan created the position to emphasize the importance of having a more science-orientation to the way DEP does business.

While Staats is part of the central office, she will be assigned to the critical area of the Office of Waste & Remediation, the unit that is attempting to bring back into production industrial sites that were polluted in the past.

“We have needed someone of Doctor Staats caliber for some time,” Waste & Remediation Director Ken Ellison said. “We will be able to use her expertise in a number of different areas. I am eager for her to begin work. With her, we now can start looking at environmental protection more from a health risk standpoint.”

Staats, 44, has been president of her own consulting firm, D.A. Staats Inc., since September 1991. She specialized in environmental and occupational toxicology, consulting nationwide for the federal government.

She is a native of West Virginia, however, and wanted to return to the state. Her brother, Ed Staats, is chief of operations for Gov. Bob Wise. Dee Ann Staats now lives in South Charleston.

“I am happy to be home in West Virginia,” Staats said. “I’m honored to contribute my expertise in environmental health in the service of her people.”

Staats earned her undergraduate degree in chemistry from West Virginia Wesleyan in 1979 and her doctorate in pharmacology toxicology from West Virginia University in 1987.

## Environmental agency has successful legislative session

CHARLESTON – Lawmakers provided nearly \$1 million for water measurements, established new water protection standards and increased water pollution penalties during the 2001 session of the West Virginia Legislature.

The House of Delegates approved the state's budget 81-12 and the Senate on a vote of 27-0 Monday night to end the legislative session.

"We faced a number of serious and difficult challenges during this session and I believe came to the forefront in facing each," said Michael O. Callaghan, who was confirmed as DEP director by the Senate on a 34-0 vote.

"Governor Bob Wise was solidly behind our environmental initiatives and I want to personally thank him and the members of the House of Delegates and the state Senate for their steadfast support," Callaghan said Tuesday.

The new state budget, adopted in the extended session of the Legislature, includes \$946,000 to permit the DEP's Office of Water Resources to develop studies on impaired streams, a program commonly known as total maximum daily loads. The TMDLs determine how much pollution a stream can assimilate and still meet federal protection standards.

TMDLs will be used in the future to determine whether development can take place along impaired streams. The federal government had been doing the studies and the state wanted to assume control of them.

After a lengthy battle, legislators also adopted standards aimed at providing additional protections to more than 2,000 miles of trout and other high-quality streams in West Virginia.

The antidegradation legislation rewrote rules to prevent water sources in the state from being further polluted by industrial activity.

"We believe the proposal crafted by the DEP and pushed vigorously by Office of Water Resources Chief Allyn Turner is a good compromise that will be found acceptable by the U.S. Environmental Protection Agency," Callaghan said. "It will protect streams, provide for future protections, and still allow development."

A key element retained by DEP is a classification of a stream known as tier 2.5, which allows only limited additional wastes to be discharged on those waters. It is a higher standard than that found under federal law. The bill also allows for landowners to petition Callaghan for a redress of their complaints if they believe their water has been improperly classified.

EPA has indicated it supports the legislation.

This same bill also included a number of other rules changes the agency wanted that dealt with air, mining, hazardous waste, underground storage, blasting and other offices.

One of the proposals provides a limited exemption to the prohibition of disposing yard waste in landfills by allowing it only where no other option is available.

After a three-year push, the DEP was successful, with the cooperation of business, particularly the West Virginia Manufacturers Association, and conservation groups, in increasing penalty limits for water pollution violations.

The proposal, advocated by Chief Inspector Mike Zeto, brings the state in line with surrounding states and had been sought by EPA.

It takes the maximum potential daily fine to \$25,000 from the current \$10,000.

Legislation also was approved to change the division into the Department of Environmental Protection, to make Callaghan a Cabinet-level secretary and give him a pay raise.

The change reflects the importance Governor Wise places on the DEP in protecting the state's environment and in also furthering business development.

Legislation to provide change in last year's blasting laws to ensure homeowners receive copies of preblast surveys also was enacted. The surveys are done prior to blasting to document whether the explosions have damaged a residence or water sources. The federal government sought the changes. The measure also adds inspection, enforcement and appeals procedures.

The Legislature approved a bill to continue the operations of the Department of Environmental Protection until July 2, 2002.

Only one major bill was lost by the DEP this session when a member of the House of Delegates blocked enactment of the Senate-passed measure. It was legislation to protect people living downstream from dangerous dams. The bill died in the House of Delegates.