

WEST VIRGINIA
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

FORM #3

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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

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

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

AMENDMENT TO AN EXISTING RULE: YES , NO

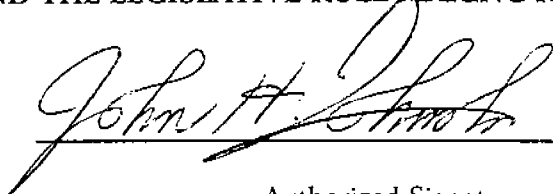
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 9

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: _____

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

\$9.40



BUREAU OF ENVIRONMENT
10 McJunkin Road
Nitro, WV 25143-2506

CECIL H. UNDERWOOD
GOVERNOR

MICHAEL P. MIANO
COMMISSIONER

July 24, 1998

Ms. Judy Cooper
Director
Administrative Law Division
Capitol Complex
Charleston, WV 25305

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

Dear Ms. Cooper:

This is to advise that I am giving approval to file the above-referenced rule with your Office and Legislative Rule-Making as an agency-approved rule.

Your cooperation in this regard is very much appreciated. If you have any questions or require additional information, please feel free to contact Carrie Chambers in my Office at 759-0515.

Sincerely yours,


Michael P. Miano
Commissioner

MPM:cc

Attachment

cc: Carrie Chambers
Karen Watson, OAQ

Questionnaire

DATE: July 31, 1998

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

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:
June 16, 1998

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' (July's issues)
- IV. Public Notice placed on agency's Web site;
<http://wvnm.wvnet.edu/~Jmorgan/index.htm>

c. Date of Public Hearing (s) or Public Comment Period ended:
July 21, 1998

- 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: 45CSR9 - "Rules Pertaining to 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), EPA has reviewed the air quality criteria and national ambient air quality standards (NAAQS) for ozone (O₃) and particulate matter (PM). Based on these reviews, the EPA revised the standards for both classes of pollutants.

Ozone and related pollutants have long been recognized, in both clinical and epidemiological research, to affect public health. The revised standard would provide protection for children and other at-risk populations against a wide range of O₃-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 possible long-term damage to the lungs.

As explained above, EPA revised the national ambient air quality standards (NAAQS) for particulate matter (PM) and for ozone (O₃) (July 18, 1997 *Federal Register*) thereby necessitating the proposed revisions to the corresponding state counterpart rules. However, the State of West Virginia has filed a Petition for Review with the Court of Appeals for the District of Columbia Circuit challenging the final rules that establish both standards. The challenge to the ozone standards has been assigned CASE NO. 97-1566 (consolidated with 97-1441). The Division of Environmental Protection, Office of Air Quality is going forward with the promulgation of this proposed rule which adopts the new federal standards, pending the outcome of the legal challenge. If the court rules in the State's favor, the proposed state rule may be withdrawn or modified accordingly.

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

A federal counterpart to this proposed rule exists. The proposed rule is the same in substance as the federal counterpart.

Because the proposed rule is the same in substance as the federal counterpart, 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 their July 22, 1998 meeting, the Environmental Protection Advisory Council reviewed and discussed this rule - there were no substantive changes as a result of their discussion. (See attached minutes of that meeting.)

MINUTES

DIVISION OF ENVIRONMENTAL PROTECTION ADVISORY COUNCIL

July 22, 1998, DIRECTOR'S CONFERENCE ROOM, NITRO HEADQUARTERS

The eleventh meeting of the DEP Advisory Council was held Wednesday, July 22, 1998, in the Director's Conference Room, Nitro Headquarters' Offices. The meeting was called to order at 1:00 p.m. by Chairman Mike Miano.

ATTENDING:

Advisory Council Members:

Michael P. Miano, Chairman
Jacqueline Hallinan
Larry Harris
William Raney
Rick Roberts
William Samples

Environmental Protection:

John Ailes	Jennifer Pauer
John Benedict	Pete Pitsenbarger
Dick Cooke	Ken Politan
Mike Dorsey	Cap Smith
Andy Gallagher	Barb Taylor
Randy Huffman	Karen Watson
Pat Park	Mike Zeto

1) **Introduction of A. V. Gallagher, DEP's Chief Communications Officer.**

Chairman Miano introduced DEP's new Chief Communications Officer, A. V. Gallagher. Council Members welcomed Mr. Gallagher and wished him well in his new job.

2) **Review and Approval of Minutes of April 30, 1998.**

The minutes of the April 30 meeting were approved with the correction of two typos. Mr. Roberts brought to everyone's attention the discussion in the April 30 minutes of AML funding issues in the last meeting, and the Council's desire to send letters to West Virginia's Congressional delegation to identify West Virginia's share of the AML funds that need to be

released by the US Congress. Separate letters would go to West Virginia's legislative leadership informing them of the problems created by not having the AML funds available, with a copy of the letters sent to the Congressional delegation attached to them.

Randy Huffman asked if the Council members would like to sign each letter individually. They each expressed their desire to do so. Pat Park, AML, distributed a copy of the draft letters to Council for their review. After several minutes of discussion, it was decided the draft letters would be edited and made available to the Council members for their signature before the end of the meeting.

Mr. Miano said that Pete Pitsenbarger would like a few minutes of the Council's time before they continued with the agenda.

Mr. Pitsenbarger informed the Council of his retirement plans for the end of August. He said he would like to express his heartfelt thanks to the Council for their letter of appreciation they had sent him thanking him for his many years of service to the State of West Virginia. Mr. Pitsenbarger said his years in state government had been a wonderful opportunity, and he will miss both the work and the people.

3) **Review of Proposed DEP Rules in Accordance with WV Code §22-1-3(c).**

Mr. Miano asked if there were any other issues to be discussed before continuing with the Agenda and the review of DEP proposed rules for the 1999 session.

Mr. Roberts said he would like to express his concern with the approach DEP has taken in involving the Council members in the rulemaking process -- not only this year, but in the past. He said the rules are not sent to the Council members until the last minute and they are not given adequate time to review and comment on them.

It was pointed out that the law [22-1-1(c)] specifically requires the Council to be consulted prior to the proposal of any new rule.

Mr. Raney said he would like to go on record wholeheartedly in agreement with the concerns of Mr. Roberts. He said he has great concerns with giving advice or recommendations to the Director on development of rules (or amendments to rules) the Council members were not involved in before they were filed with the Secretary of State's Office for Public Hearing and Comments. He said he believes there definitely needs to be improvement in this process in the future.

A discussion was then held on possible ways to bring the Council into the rulemaking process in an earlier stage of rule development. Several DEP staff members expressed their frustrations with the rulemaking process, and gave one example as the short period of time between the signature of bills by the Governor and the early filing date of the rules with the

Legislative Rulemaking Review Committee. Another example that was given was turnaround time with federal agencies, i.e., EPA and OSM, which are also involved in the process.

After several minutes of discussion, Mr. Huffman stated, with the Chairman's approval, that he would put together a committee to discuss the Council's concerns and get back to the Council with their recommendations by the first of September.

Mr. Miano also expressed his desire to improve the involvement of the Council in the rulemaking process, and assured the Council that everything possible would be done in the future to comply with the Council's recommendations.

[It should be noted that at this time Ms. Hallinan left the Advisory Council Meeting because of a previously-scheduled commitment].

Continuing with the agenda, Mr. Miano said that staff would be available from each program office to give a brief description of the proposed new rules or rule amendments and to answer any questions the Council members might have. If a question should come up that couldn't be answered during the meeting, we would make note of it and get back with an answer to the Council as soon as possible. The first rule on the agenda is 60CSR4, filed under the Director's Office.

**60CSR4 -"AWARDING OF WEST VIRGINIA STREAM PARTNERS PROGRAM GRANTS
RULE"**

Jennifer Pauer, AML, said 60CSR4 is a new rule that is being proposed by the West Virginia Stream Partners Program to provide requirements and guidance concerning the awarding of grants to broad-based community organizations for watershed improvement projects. Ms. Pauer stated that the program is a joint effort of DEP, Forestry, Natural Resources, and the West Virginia Soil Conservation Agency.

A brief discussion was held concerning the source of the funding, availability of the funds, guidelines for criteria, and possible additional funding. Mr. Samples asked if there could also be additional funding sources, for example contributions from supplemental environmental projects used to offset proposed penalties. Ms. Pauer stated that as the rule now stands, it's only purpose is to distribute the funds, but she would check into the law and let the Council know if language could be added to also implement provisions for additional funding from penalty collections or other sources. Mr. Raney moved to recommend to the Chairman (in his capacity as Director of DEP) the filing of 60CSR4 with the condition that Mr. Samples' recommendation be considered. The motion was seconded and passed unanimously.

The following Air Quality rules were discussed by Karen Watson, OAQ, with assistance from John Benedict, also from the OAQ office:

45CSR33 - "ACID RAIN PROVISIONS AND PERMITS"

45CSR25 - "TO PREVENT AND CONTROL AIR POLLUTION FROM HAZARDOUS WASTE TREATMENT, STORAGE OR DISPOSAL FACILITIES"

45CSR34 - "EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS PURSUANT TO 40 CFR PART 63"

45CSR16 - "STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES PURSUANT TO 40 CFR PART 60"

45CSR24 - "TO PREVENT AND CONTROL EMISSIONS FROM HOSPITAL/MEDICAL/INFECTIOUS WASTE INCINERATORS"

45CSR36 - "CONFORMITY TO STATE OR FEDERAL IMPLEMENTATION PLANS OF TRANSPORTATION PLANS, PROGRAMS, AND PROJECTS DEVELOPED, FUNDED OR APPROVED UNDER TITLE 23 U.S.C. TO THE FEDERAL TRANSIT LAWS, TO APPLICABLE AIR QUALITY IMPLEMENTATION PLANS (TRANSPORTATION CONFORMITY)"

45CSR8 - "AMBIENT AIR QUALITY STANDARDS FOR SULFUR OXIDES AND PARTICULATE MATTER"

45CSR9 - " RULES PERTAINING TO AMBIENT AIR QUALITY STANDARDS FOR CARBON MONOXIDE AND OZONE"

Ms. Watson gave the Council a brief explanation of the proposed OAQ rules. She explained that seven rules (45CSR33, 25, 34, 16, 36, 8, and 9) were being amended to conform to federal regulations, and 45CSR24 is a proposed new rule to adopt federal New Source Performance Standards for new and existing hospital/medical/infectious waste incinerators. This rule also incorporates by reference the federal standards, with limited exception.

Mr. Raney said he had always questioned the validity of the Appendix B Fiscal Note that is attached to each rule that is filed; in particular the section that relates to the effect of the proposed rule which usually contains all zeros.

John Benedict explained that is a question that has come up several times in the past, and the agency has always taken the position that the numbers are reflective of the cost to the state of implementing the new rule or the proposed amendments to an existing rule.

After a brief question and answer session of the OAQ rules, Mr. Raney moved that recommendation be made to the Director that all eight (8) rules be filed, as proposed, with the exception that 45CSR34, subdivision 4.1 b, be revised to clarify that 45CSR30 includes certain requirements relating to Section 112(r) of the Clean Air Act. The motion was seconded and passed unanimously by the Council.

38CSR2 - "SURFACE MINING AND RECLAMATION RULE"

John Ailes, Chief of OMR, said the amendments to this year's submission of the Surface Mining and Reclamation rule were few in number. Two new definitions were added,

“mountaintop mining operation” and “area mining operation,” and only minor cleanup to correct typographical errors and update and clarify other sections within the rule. Mr. Raney moved recommendation be made to the Chairman that the rule be filed as proposed. The motion was seconded and passed unanimously by the Council.

Mike Dorsey and Dick Cooke from the Office of Waste Management described the following Waste Management rules:

33CSR20 - “HAZARDOUS WASTE MANAGEMENT RULE”

33CSR1 - “SOLID WASTE MANAGEMENT RULE”

33CSR2 - “SEWAGE SLUDGE MANAGEMENT RULE”

Mike Dorsey explained the amendments to 33CSR20 - Hazardous Waste Management Rule. Along with other federally-required amendments to this rule, Section 11 contains a major rewrite to conform with the federal requirements of 40 CFR Part 124.

Mr. Samples asked why it takes up to 120 days to receive approval from the state to exclude a waste at a particular generating facility when EPA has already approved the petition - could the time be changed from 120 days to 60 days?

Cap Smith, Chief, OWM, said the time of 60 to 120 days is just a general number. He stated that he didn't see a problem with changing the time from 120 days to 60 days. He said it rarely takes anywhere close to that time to approve or deny the petition - it is usually taken care of in a matter of days.

There was some discussion as to whether this amendment should be proposed in this legislative session. The Council decided to wait until the rule is modified and filed in the 2000 Legislative Session to propose the amendment.

Dick Cooke, OWM, briefed the Council on 33CSR1. He said the revision is necessary to ensure consistency between the WV Code and 33CSR1. The emergency rule will establish criteria in determining a commercial solid waste facility's monthly tonnage limits, as required by Chapter 22, Article 15, as amended by Senate Bill No. 178.

Mike Zeto, Environmental Enforcement Office, then discussed 33CSR2 and explained the proposed emergency rule is necessary to update the Sewage Sludge Management rule to comply with mandates of Senate Bill 178. The revisions and inclusions are necessary to ensure consistency between the WV Code and 33CSR2. The emergency rule will also impose new requirements relating to the management of sewage sludge as required by Chapter 22, Article 15, as amended by Senate Bill 178, specifically as it relates to the control of off-site odors, and the protection of waters of the state.

After discussion was completed on the Waste Management rules, Mr. Raney moved to recommend that the Chairman file the Waste rules as proposed. The motion was seconded and passed unanimously.

The following Office of Water Resources rules were reviewed by Barb Taylor and Ken Politan.

47CSR31 - "STATE WATER POLLUTION CONTROL REVOLVING FUND"

47CSR33 - "STATE CONSTRUCTION GRANTS PROGRAM RULE"

47CSR3 - "POLLUTION PREVENTION AND COMPLIANCE ASSISTANCE"

47CSR4 - "STATE CERTIFICATION OF ACTIVITIES REQUIRING NATIONWIDE PERMITS NO. 21 AND NO. 26"

Barb Taylor, Chief, OWR, explained the amendments contained in 47CSR31, 33, and 3. She said 47CSR31 is being amended to comply with the latest revisions of the Clean Water Act and current design practices; 47CSR33 is a proposed new rule which allows DEP to make grants to communities to provide adequate wastewater collection and/or treatment services; and 47CSR3 is a new proposed rule to implement the provisions of HB 4693 passed during the 1998 Session to promote pollution prevention by encouraging reduction or elimination of pollutants at the source through process modification, material substitution, in-process recycling, reduction of raw material use or other source reduction opportunities.

Mr. Roberts asked if the proposed amendments to prohibit the use of closed-vessel ultraviolet disinfection and inverted siphons in "Appendix B" under "Design Standards for Collection Systems and Treatment Works" is one recommended by EPA or by the state.

Ms. Taylor replied that she would need to check with Bob Coontz in Water Resources' Construction Assistance Office who drafted the proposed rule amendments, and have Mr. Coontz get back with Mr. Roberts with an answer as soon as possible.

The last rule to be addressed by the Council, 47CSR4, was reviewed by Ken Politan from the Office of Mining and Reclamation. Ken stated that this is a new proposed rule that will establish a water certification program for surface mining operations and will implement the provisions of SB 145 passed during the 1998 Session.

Mr. Raney asked if implementation of this rule was specifically mandated in SB 145.

Mr. Politan said no, but the agency felt the proposed rule is needed to give some guidance in the implementation of the Senate bill.

Mr. Raney voiced his concern over the rule. He said he did not believe it was a workable

rule, and he had received several comments from others indicating the same concerns. He said that one of his biggest objections to the proposed rule was lack of input from outside DEP when the rule was written. Mr. Raney stated that SB 145 indicates the Director shall confer with representatives of the surface coal mining industry and representatives of environmental organizations who have an interest in water quality, before such a manual is developed and DEP staff did not do this.

After several minutes of discussion concerning 47CSR4, Mr. Raney made a motion to recommend that the Chairman file 47CSR3, 31, and 33 as proposed, with the condition that Mr. Roberts' questions are addressed in 47CSR31; that the comment period be extended after the end of the public hearing for 47CSR4, and any actions to implement the proposed rule be delayed until such time as a more workable rule can be drafted with the opportunity for input from interested parties. The motion was seconded and passed with a 3 to 1 vote.

Due to the length of time taken to review the proposed rules, there was no open discussion by the Council members. The meeting was adjourned at 5:15 p.m.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

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

Type of Rule: 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		
	Increase	Decrease	Current	Next	There- after
Estimated Total Cost	\$ 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 carbon monoxide and 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.

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: June 14, 1995

Signature of Agency Head or Authorized Representative

John H. [Signature]

WEST VIRGINIA
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

FORM #1

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JUN 16 10 35 AM '98

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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: _____

RECEIVED

JUN 16 1998

Legislative Rule Making
Review Committee

DATE OF PUBLIC HEARING: July 21, 1998 TIME: 6:00 p.m.

LOCATION OF PUBLIC HEARING: Office of Air Quality
1558 Washington Street East
Charleston, WV 25311-2599

COMMENTS LIMITED TO: ORAL , WRITTEN , BOTH

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: John H. Johnston, 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.

Office Air Quality
1558 Washington Street East
Charleston, WV 25311-2599

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

ATTACH A BRIEF SUMMARY OF YOUR PROPOSAL

John H. Johnston
by: *John G. Sommers*



BUREAU OF ENVIRONMENT

CECIL H. UNDERWOOD
GOVERNOR

10 McJunkin Road
Nitro, WV 25143-2506

Michael P. Miano
COMMISSIONER

June 15, 1998

Ms. Judy Cooper
Director, Administrative Law Division
Office of the Secretary of State
Capitol Complex
Charleston, West Virginia 25305

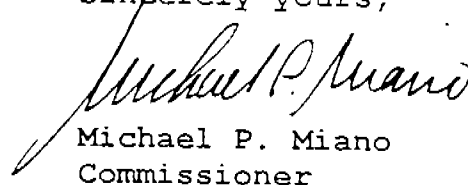
RE: 45CSR9 - "Rules Pertaining to Ambient Air
Quality Standards for Carbon
Monoxide and Ozone"

Dear Ms. Cooper:

This is to advise that I am giving approval to file the above-referenced rule with your office as notice of public hearing/comment period.

Your cooperation in this regard is very much appreciated. If you have any questions or require additional information, please contact Carrie Chambers in my office at 759-0515.

Sincerely yours,


Michael P. Miano
Commissioner

MPM:cc

cc: Carrie Chambers
Karen Watson, OAQ

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

FILED

JUL 31 4 04 PM '98

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 9
RULES PERTAINING TO AMBIENT AIR QUALITY STANDARDS FOR
~~CARBON MONOXIDE, NON-METHANE HYDROCARBONS, AND OZONE~~

§45-9-1. General.

1.1. Scope. -- The purpose of ~~Series 9~~ this rule is to establish ambient air quality standards for carbon monoxide, ~~non-methane hydrocarbons,~~ 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. -- ~~June 27, 1980;~~

1.4. Effective Date. -- ~~October 22, 1980.~~

§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 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 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 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. [Reserved]~~

~~3.4. "Person" means any and all persons, natural or artificial, including the State of West Virginia or any other state, the United States of America, any municipal, statutory, public or private corporation organized or existing under the laws of this or any other state or country, and any firm, partnership or association of whatever nature.~~

~~3.5. "Hydrocarbons" means compounds whose molecules consist of atoms of hydrogen and carbon and exist in the atmosphere in the gas phase. Specifically excluded are hydrocarbons and other organics associated only with suspended particles in the atmosphere. For purposes of these air quality standards non-methane hydrocarbons shall be taken to be the difference between the reported total hydrocarbons and methane values obtained from an air sample.~~

~~3.63. "Ozone" means the triatomic oxygen molecule (O₃), a very reactive form of oxygen.~~

~~3.7. "Standard Conditions" means for the purposes of this rule a temperature of 25 degrees C and a pressure of 760 mm of mercury column.~~

~~3.84. "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.~~

§45-9-4. 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. Maximum one (1) hour concentration (highest single value per day), two hundred thirty-five (235) micrograms per cubic meter (0.12 ppm). Violation of this standard shall occur when the average number of expected exceedances is greater than one per year based on three (3) years data. (Reference 1): The level of the~~

8-hour primary and secondary ambient air quality standards is 0.08 parts per million (ppm), daily maximum 8-hour average, attained 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 of 40 CFR Part 50.

~~4.1.c. Hydrocarbons (Measured and Corrected for Methane)~~

~~Maximum three (3) hour concentration, one hundred sixty (160) micrograms per cubic meter (0.24 ppm) for the time period of 6:00 a.m. to 9:00 a.m. - not to be exceeded more than once per year.~~

~~The hydrocarbon standard is to be used as a guide in devising implementation plans to achieve ozone standards.~~

§45-9-5. Methods of Measurement.

5.1. Carbon Monoxide concentrations shall be determined by nondispersive infrared (NDIR) methods or by such other methods approved as equally or more specific, accurate, sensitive, and reproducible by the Director.

5.2. Ozone concentrations shall be determined by the chemiluminescence reaction of ozone with ethylene and calibrated by the UV photometric procedure (Reference 2), or by the boric acid potassium iodide (BAKI) method which may be used as the calibration procedure in place of the UV photometric method until August, 1980, or by such other detection and/or calibration methods approved as equally or more specific, accurate, sensitive, and reproducible by the Director measured in the ambient air by a reference method based on Appendix D of 40 CFR Part 50 and designated in accordance with 40 CFR Part 53.

~~5.3. Hydrocarbon concentrations shall be determined by subtraction of methane concentrations from total hydrocarbons concentrations determined by the flame ionization technique or by such other methods approved as equally or more specific, accurate, sensitive, and reproducible by the Director.~~

5.43. Other less specific methods of measurement may be used provided an accurate method of conversion can be developed to express the results in terms of equivalence to those that would be expected using the above methods or other more specific, accurate, sensitive, and reproducible methods approved by the Director.



Tammy
Kuren
7/23/98
Karon

**WEST VIRGINIA
MANUFACTURERS ASSOCIATION**

2001 Quarrier Street, Charleston, WV 25311
Telephone: (304) 342-2123
FAX: (304) 342-4552

WEST VIRGINIA
AUG 21 P 5:45

July 21, 1998

Mr. John Johnston, Chief
Office of Air Quality
Division of Environmental Protection
1558 Washington Street, East
Charleston, West Virginia 25311

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

Dear Chief Johnston:

On behalf of the West Virginia Manufacturers Association ("WVMA"), I am pleased to submit these comments on the above-captioned proposed rules which seek to incorporate the revised National Ambient Air Quality Standards ("NAAQS") for ozone and particulate matter ("PM"). Commissioner Michael P. Miano approved the rules for filing on June 15, 1998, and the proposed rules were filed with the Secretary of State on June 16, 1998. A public hearing will be held and the public comment period expires on the proposed rules on July 21, 1998.

The WVMA represents a broad cross-section of approximately 200 large and small industrial concerns throughout the State of West Virginia. In keeping with WVMA's supportive position regarding the development of West Virginia's Air Pollution Control Program, the WVMA offers these comments as a means to facilitate progress towards a reasonable protective program, consistent with the requirements of the Clean Air Act and regulations promulgated thereunder. WVMA appreciates the administrative need to update the State's regulations incorporating the recently revised NAAQS for ozone and PM, but believes it is appropriate for the Office of Air Quality ("OAQ") to acknowledge the pending litigation initiated by the State of West Virginia and other states and stakeholders (now pending in the United States Court of Appeals for the District of Columbia Circuit) challenging these standards which the OAQ proposes to incorporate through revisions to 45 CSR 8 and 45 CSR 9, and to clearly state that West Virginia disagrees with these standards and may withdraw or revoke these standards if the litigation succeeds.

As stated in the Briefing Documents submitted with the proposed revisions to 45 CSR 8 and 45 CSR 9, the United States Environmental Protection Agency ("EPA") revised the NAAQS for ozone and PM on July 18, 1997. EPA elected to revise the NAAQS for ozone and PM despite significant questions as to the environmental need for and health benefit of such revisions. A number

Board of Director Members

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Mr. John Johnston, Chief
July 21, 1998
Page 2

of the concerns expressed by scientists and the regulated community were well identified by the OAQ on March 11, 1997, in its comments to the EPA on the proposed revisions to the ozone and PM NAAQS published in the Federal Register on December 13, 1996. The various issues raised by the WVMA and the OAQ in their comments were not adequately addressed by EPA in the final rules. WVMA assumes that the EPA's failure to adequately address concerns raised by states, industry and others, was the motivating factor in the State of West Virginia's decision to file suit against the EPA challenging the validity and need for the revised ozone and PM NAAQS. In view of the obvious concern with regard to the scientific validity of the revised ozone and PM NAAQS, the OAQ should state its lack of support for the revised NAAQS in connection with the proposed revisions to 45 CSR 8 and 45 CSR 9, and so apprise the Legislative Rule-Making Review Committee, even if legal timing constraints compel the OAQ to move forward with the adoption of these standards on a conditional schedule.

The proposed revisions to 45 CSR 8 and 45 CSR 9 should be revised to acknowledge the pending lawsuits and clearly state that the proposed revisions to 45 CSR 8 and 45 CSR 9 would be withdrawn if the legal challenge to the revised NAAQS is successful before final adoption. Additionally, the proposed revisions to 45 CSR 8 and 45 CSR 9 should contain language to provide for the eventuality of successful litigation in order to avoid any regulatory gaps. This might be accomplished by simply leaving in place those current rules governing ozone and PM, and providing for reinstatement of the former standards or such other approach as may be consistent with the Court's order.

Again, WVMA appreciates the opportunity to comment on the proposed revisions of 45 CSR 8 and 45 CSR 9. While the WVMA appreciates the need for the OAQ to incorporate changes in the federal requirements in order to avoid sanctions and keep the state's state implementation plan current, the State should clearly reflect the implications of the pending litigation and the issues raised therein in the OAQ's response to comments, and the proposed revisions should contain language which accounts for the pending litigation.

Respectfully submitted,

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

John K. Pitner
Air Team Leader
Environmental, Safety & Health Committee
West Virginia Manufacturers Association

JKP/lmw

Mr. John Johnston, Chief
July 21, 1998
Page 3

cc: Karen S. Price, President
David L. Moss, ES&H Coordinator
Air Team Members

45CSR9

RULES PERTAINING TO AMBIENT AIR QUALITY STANDARDS FOR CARBON MONOXIDE AND OZONE

RESPONSE TO COMMENTS

At the public hearing on proposed revisions to 45CSR9 conducted on July 21, 1998, no one submitted oral comments. The Division of Environmental Protection Office of Air Quality (OAQ) did, however, receive one written comment on the rule from the West Virginia Manufacturers Association. The OAQ has summarized this comment and provides the following response.

Commenter: West Virginia Manufacturers Association

COMMENT: OAQ should acknowledge pending litigation initiated by W. Va. challenging the revised federal standards and clearly state that W. Va. disagrees with the standards and may withdraw or revoke them if litigation succeeds.

RESPONSE: The OAQ agrees with the comment and, in fact, compiled an *Addendum* which was included in the record at the public hearing on July 21, 1998. The *Addendum* outlines the legal challenge and clearly says that the State may withdraw or modify the rule pursuant to the court's decision. Additionally, the Briefing Document filed with the proposed rule addresses the issue in a similar fashion.

COMMENT: OAQ should state its lack of support for the revised standards in connection with 45CSR9 and so apprise the LRMRC.

RESPONSE: OAQ believes the litigation speaks for itself with regard to the "lack of support" for the new standards. Further, the Briefing Document submitted to the LRMRC concomitantly with the proposed rule has been revised to include the pertinent information regarding the legal challenge.

COMMENT: The proposed revisions to 45CSR9 should be revised to acknowledge the lawsuits and clearly state that the proposed rule would be withdrawn if the challenge is successful before final adoption. The proposed rule should contain language to provide for the eventuality of successful litigation to avoid any regulatory gaps.

RESPONSE: The commenter requests rule provisions that OAQ believes to be speculative, inappropriate and unnecessary. The revised NAAQS have been fully promulgated by U.S.EPA and have the force of law. While OAQ has challenged that law, we feel compelled to proceed with the associated state rule-making unless, and until, such time as the federal requirements are amended by a court of competent jurisdiction. OAQ has full power and authority to revise or withdraw the proposed rule pursuant to any such legal finding and can accomplish this expeditiously through emergency rule-making if warranted. Therefore, it is unnecessary to incorporate such provisions in the original rule as proposed.

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

On Tuesday, July 21, 1998 beginning at 6:00 p.m., the West Virginia Division of Environmental Protection, Office of Air Quality will hold a public hearing on 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"
- 45CSR16 "Standards of Performance for New Stationary Sources Pursuant to 40 CFR Part 60"
- 45CSR24 "To Prevent and Control Emissions from Hospital/Medical/Infectious Waste Incinerators"
- 45CSR25 "To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities"
- 45CSR33 "Acid Rain Provisions and Permits"
- 45CSR34 "Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 63"
- 45CSR36 "Requirements for Determining Conformity of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or The Federal Transit Laws, to Applicable Air Quality Implementation Plans (Transportation Conformity)"

Upon authorization and promulgation of revisions to 45CSR8, 45CSR9, and 45CSR36, 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 45CSR24, the rule will be submitted to the U.S. Environmental Protection Agency as part of the State Plan for Municipal Solid Waste (MSW) Landfills. Upon authorization and promulgation of revisions to 45CSR25, the rule will be submitted to the U. S. Environmental Protection Agency as part of the State Hazardous Waste Management Program.

Upon authorization and promulgation of revisions to 45CSR16, 45CSR33 and 45CSR34, the Office of Air Quality will seek federal delegation of authority from the U.S. Environmental

Protection Agency to implement and enforce the revised standards.

The hearing will be held in the Office of Air Quality's Conference Room located at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written and oral comments by the public will be accepted during the hearing on July 21st and will be made a part of the rulemaking record. The public may also submit written comments by mail or other delivery to the Office of Air Quality through July 21st for inclusion in the rulemaking record at the following address:

John H. Johnston, Chief
Office of Air Quality
1558 Washington Street East
Charleston, WV 25311-2599

Copies of the proposed legislative rules will be available for public review on or before June 18, 1998 at the Office of Air Quality's Charleston office at the above address.



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State of West Virginia.

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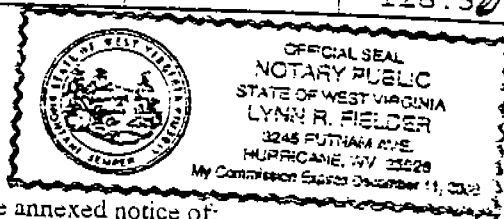
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THE CHARLESTON GAZETTE, A DAILY DEMOCRATIC NEWSPAPER,
 THE DAILY MAIL, A DAILY REPUBLICAN NEWSPAPER,
 published in the city of Charleston, Kanawha County, West Virginia, do solemnly swear that the annexed notice of:
PUBLIC HEARING

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 19TH day of JUNE 1998. Published during the following dates: 06/18/98-06/18/98

subscribed and sworn to before me this 23 day of June

printers fee \$ 128.52



Lynn R. Fielder
 Notary Public of Kanawha County, West Virginia

NOTICE OF PUBLIC
HEARING AND
PUBLIC COMMENT
PERIOD.

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

45CSR16 "Standards of Performance for New Stationary Sources Pursuant to 40 CFR Part 30"

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

45CSR25 "To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities"

45CSR33 "Acid Rain Provisions and Permits"

45CSR34 "Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 33"

45CSR36 "Requirements for Determining Conformity of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or The Federal Transit Laws, to Applicable Air Quality Implementation Plans (Transportation Conformity)"

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Jann H. Johnston, Chief
Office of Air Quality
1538 Washington St., E.
Charleston, WV 25311-2599

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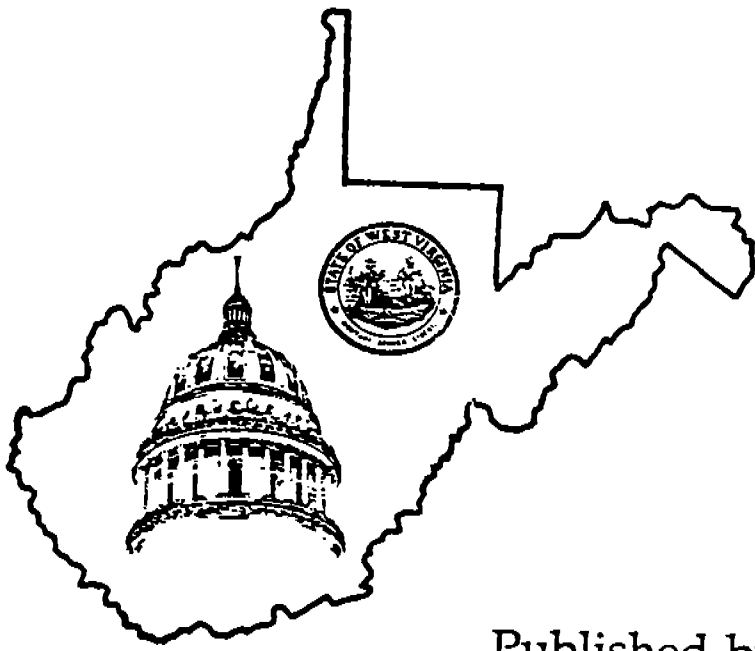
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July 21, 1998



Division of Environmental Protection
Public Hearing on
45CSR8, 45CSR9, 45CSR14, 45CSR24, 45CSR25, Sign-In
45CSR33, 45CSR34, 45CSR36 I would like to comment

Name	Address	YES	NO
1. James D. Elliott	Robnson + McElwre		<input checked="" type="checkbox"/>
2. Karen Watson	CAQ - 1615 Washington		<input checked="" type="checkbox"/>
3. Lucy Pontiveros	CAQ - 1615 Washington st E		<input checked="" type="checkbox"/>
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WEST VIRGINIA REGISTER

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Administrative Law Division

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Director*

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Leah Powell
Administrative Assistants*

*Secretary of State
Administrative Law Division
Bldg. 1, Suite 157K
1900 Kanawha Blvd. E.
Charleston, WV 25305-0770*

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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 §822-5-1 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 Oxides and Particulate Matter"

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

DATE OF PUBLIC HEARING: July 21, 1998 TIME: 6:00 p.m.

LOCATION OF PUBLIC HEARING: Office of Air Quality

1558 Washington Street East
Charleston, WV 25311-2599

COMMENTS LIMITED TO: ORAL WRITTEN BOTH

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: John H. Johnson, 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

Office of Air Quality

1558 Washington Street East

Charleston, WV 25311-2599

ATTACH A BRIEF SUMMARY OF YOUR PROPOSAL. *John H. Johnson*

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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: July 21, 1998 TIME: 6:00 p.m.

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

RULE TYPE: Legislative CITE AUTHORITY W. Va. Code §822-5-1 et seq.

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 16

TITLE OF RULE BEING AMENDED: "Standards of Performance for New Stationary

Sources"

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

DATE OF PUBLIC HEARING: July 21, 1998 TIME: 6:00 PM

LOCATION OF PUBLIC HEARING: Office of Air Quality

1558 Washington Street East

Charleston, WV 25311-2599

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Office of Air Quality

1558 Washington Street East

Charleston, WV 25311-2599

John H. Johnston

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

ATTACH A BRIEF SUMMARY OF YOUR PROPOSAL.

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RULE TYPE: Legislative CITE AUTHORITY W. Va. Code §822-5-1 et seq.

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED:

TITLE OF RULE BEING AMENDED:

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 24

TITLE OF RULE BEING PROPOSED: "To Prevent and Control Emissions From

Hospital/Medical/Infectious Waste Incinerators"

DATE OF PUBLIC HEARING: July 21, 1998 TIME: 6:00 PM

LOCATION OF PUBLIC HEARING: Office of Air Quality

1558 Washington Street East

Charleston, WV 25311-2599

COMMENTS LIMITED TO: ORAL WRITTEN

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: John H. Johnston, Chief

Office of Air Quality

1558 Washington Street East

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LEGISLATIVE

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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, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 23

TITLE OF RULE BEING AMENDED: "To Prevent and Control Air Pollution from

Hazardous Waste Treatment, Storage, or Disposal Facilities"

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

DATE OF PUBLIC HEARING: July 21, 1998 TIME: 6:00 am

LOCATION OF PUBLIC HEARING: Office of Air Quality

1558 Washington Street East

Charleston, WY 25311-2599

COMMENTS LIMITED TO: ORAL WRITTEN BOTH

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Office of Air Quality

1558 Washington Street East

Charleston, WY 25311-2599

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

ATTACH A BRIEF SUMMARY OF YOUR PROPOSAL.

John H. Johnson

1.0

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

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OFFICE OF THE SECRETARY OF STATE

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, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 34

TITLE OF RULE BEING AMENDED: "Emission Standards for Hazardous Air Pollutants

Pursuant to 40 CFR Part 63"

IF NO, SERIES NUMBER OF NEW RULES BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

DATE OF PUBLIC HEARING: July 21, 1998 TIME: 6:00 am

LOCATION OF PUBLIC HEARING: Office of Air Quality

1558 Washington Street East

Charleston, WY 25311-2599

COMMENTS LIMITED TO: ORAL WRITTEN BOTH

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Office of Air Quality

1558 Washington Street East

Charleston, WY 25311-2599

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

ATTACH A BRIEF SUMMARY OF YOUR PROPOSAL.

John H. Johnson

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OFFICE OF THE SECRETARY OF STATE

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 § 822-5-1 et seq.

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 36

TITLE OF RULE BEING AMENDED: "Requirements for Determining Conformity of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 21 U.S.C. or The Federal Transit Laws, to Applicable Air Quality Implementation Plans Transportation Conformity"

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

DATE OF PUBLIC HEARING: July 21, 1998 TIME: 6:00 p.m.

LOCATION OF PUBLIC HEARING: Office of Air Quality 1558 Washington Street East Charleston, WV 25311-2599

COMMENTS LIMITED TO: ORAL WRITTEN BOTTL

COMMENTS MAY ALSO BE MADE TO THE FOLLOWING ADDRESS: John H. Johnston, Chief Office of Air Quality 1551 Washington Street East Charleston, WV 25311-2596

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

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

ATTACH A BRIEF SUMMARY OF YOUR PROPOSAL

2.50 w/ attachment

Signature: John H. Johnston



WEST VIRGINIA REGISTER

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Administrative Law Division

Judy Cooper
Director

Lisa Blake
Leah Powell
Administrative Assistants

Secretary of State
Administrative Law Division
Bldg. 1, Suite 157K
1900 Kanawha Blvd. E.
Charleston, WV 25305-0770

(304)558-6000

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WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form # 1

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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: 33

TITLE OF RULE BEING AMENDED: "Acid Rain Provisions and Penalties"

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

TITLE OF RULE BEING PROPOSED: _____

DATE OF PUBLIC HEARING: July 21, 1998 TIME: 6:00 PM

LOCATION OF PUBLIC HEARING: Office of Air Quality

1558 Washington Street East

Charleston, WV 25311-2509

COMMENTS LIMITED TO: ORAL WRITTEN BOOTH

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: John H. Johnson, Chief

Office of Air Quality

1558 Washington Street East

Charleston, WV 25311-2509

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

LEGISLATIVE

ATTACH A BRIEF SUMMARY OF YOUR PROPOSAL.

John H. Johnson



DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF AIR QUALITY

CECIL H. UNDERWOOD
GOVERNOR

John H. Johnston, Chief

MICHAEL P. MIANO
DIRECTOR

August 4, 1998

Honorable Mike Ross, Co-Chair
Legislative Rule-Making Review Committee
Room MB49 - State Capitol
Charleston, WV 25305

Honorable Mark Hunt, Co-Chair
Legislative Rule-Making Review Committee
Room MB49 - State Capitol
Charleston, WV 25305

OFFICE OF THE ATTORNEY GENERAL
SECRETARY OF STATE
AUG 4 2 36 PM '98

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

Dear Gentlemen:

The Office of Air Quality (OAQ) recently received comments from the U.S. Environmental Protection Agency (EPA) regarding the above-referenced rule (a copy of EPA's comments are attached for your information). EPA's comments were not received within the 30-day public comment period, and were consequently not addressed by the agency prior to its filing the agency-approved rule with Legislative Rule-Making Review Committee.

The OAQ has reviewed EPA's comments and has revised the rule in accordance with EPA's comments. The agency's proposed revisions to section 5 are included herein, for the Committee's consideration.

If you have any questions regarding this matter, please contact Karen G. Watson at (304) 558-1213.

Sincerely,

Karen G. Watson
Karen G. Watson, Attorney

cc: Committee Members
Debra A. Graham, Counsel
Attachments

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

SERIES 9
RULES PERTAINING TO AMBIENT AIR QUALITY STANDARDS FOR
CARBON MONOXIDE, ~~NON-METHANE HYDROCARBONS,~~ AND OZONE

§45-9-1. General.

1.1. Scope. -- The purpose of ~~Series 9~~this rule is to establish ambient air quality standards for carbon monoxide, ~~non-methane hydrocarbons,~~ 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. -- ~~June 27, 1980.~~

1.4. Effective Date. -- ~~October 22, 1980.~~

§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 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 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 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. [Reserved]~~

~~3.4. "Person" means any and all persons, natural or artificial, including the State of West Virginia or any other state, the United States of America, any municipal, statutory, public or private corporation organized or existing under the laws of this or any other state or country, and any firm, partnership or association of whatever nature.~~

~~3.5. "Hydrocarbons" means compounds whose molecules consist of atoms of hydrogen and carbon and exist in the atmosphere in the gas phase. Specifically excluded are hydrocarbons and other organics associated only with suspended particles in the atmosphere. For purposes of these air quality standards non-methane hydrocarbons shall be taken to be the difference between the reported total hydrocarbons and methane values obtained from an air sample.~~

~~3.63. "Ozone" means the triatomic oxygen molecule (O₃), a very reactive form of oxygen.~~

~~3.7. "Standard Conditions" means for the purposes of this rule a temperature of 25 degrees C and a pressure of 760 mm of mercury column.~~

~~3.84. "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.~~

~~§45-9-4. 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. Maximum one (1) hour concentration (highest single value per day), two hundred thirty-five (235) micrograms per cubic meter (0.12 ppm). Violation of this standard shall occur when the average number of expected exceedances is greater than one per year based on three (3) years data. (Reference 1): The level of the~~

8-hour primary and secondary ambient air quality standards is 0.08 parts per million (ppm), daily maximum 8-hour average, attained 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 of 40 CFR Part 50.

~~4.1.c. Hydrocarbons (Measured and Corrected for Methane)~~

~~Maximum three (3) hour concentration; one hundred sixty (160) micrograms per cubic meter (0.24 ppm) for the time period of 6:00 a.m. to 9:00 a.m. - not to be exceeded more than once per year.~~

~~The hydrocarbon standard is to be used as a guide in devising implementation plans to achieve ozone standards.~~

~~§45-9-5. Methods of Measurement.~~

~~5.1. Carbon Monoxide concentrations shall be determined by nondispersive infrared (NDIR) methods or by such other methods approved as equally or more specific, accurate, sensitive, and reproducible by the Director 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 determined by the chemiluminescence reaction of ozone with ethylene and calibrated by the UV photometric procedure (Reference 2), or by the boric acid potassium iodide (BAKI) method which may be used as the calibration procedure in place of the UV photometric method until August, 1980, or by such other detection and/or calibration methods approved as equally or more specific, accurate, sensitive, and reproducible by the Director measured in the ambient air by a reference method based on Appendix D of 40 CFR Part 50 and designated in accordance with 40 CFR Part 53.~~

~~5.3. Hydrocarbon concentrations shall be determined by subtraction of methane concentrations from total hydrocarbons concentrations determined by the flame ionization technique or by such other methods approved as equally or more specific, accurate, sensitive, and reproducible by the Director.~~

~~5.4. Other less specific methods of measurement may be used provided an accurate method of conversion can be developed to express the results in terms of equivalence to those that would be expected using the above methods or other more specific, accurate, sensitive, and reproducible methods approved by the Director.~~

Tammy
John B
Karen
7/24/98
JL

John B



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

July 15, 1998

Mr. John H. Johnston, Chief
Division of Environmental Protection
State of West Virginia
1558 Washington Street East
Charleston, WV 25311-2599

1998 JUL 21 A 10: 26
RECEIVED
WV DIV OF ENVIR PROTECT
OFFICE OF AIR QUALITY ANNEX

Dear Mr. Johnston:

EPA has reviewed the June 18, 1998 public hearing package pertaining to West Virginia's proposal to adopt the new National Ambient Air Quality Standards for ozone and carbon monoxide. EPA fully supports West Virginia's proposal with one major exception. The proposed West Virginia regulations contain a provision in § 45-9-5 in section 5.3 that allows director's discretion to alter the method of measurement for carbon monoxide and ozone. The measurement methods appropriate for carbon monoxide and ozone are contained Appendix D, 40 C.F.R. Part 50 and cannot be altered except by federal rulemaking. If this provision was adopted by the West Virginia Department of Environmental Protection, EPA would be unable to approve it.

Thank you for the opportunity to comment on your proposed regulations. If you have any questions, please contact me or have your staff contact Cynthia Stahl at 215-814-2180.

Sincerely,

Marcia L. Spink
Marcia L. Spink, Associate Director
Air Programs



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

July 29, 1998


Mr. John H. Johnston, Chief
Division of Environmental Protection
State of West Virginia
1558 Washington Street East
Charleston, WV 25311-2599

Dear Mr. Johnston:

It has come to EPA's attention that West Virginia's regulations at § 45-9-5, section 5.1 contains a director's discretion provision allowing the West Virginia air director to approve alternative methods of measurement for carbon monoxide. The measurement methods appropriate for carbon monoxide is contained Appendix D, 40 C.F.R. Part 50 and cannot be altered except by federal rulemaking. If this provision remains in the West Virginia regulations and is submitted to EPA for approval, EPA would not be able approve it.

If you have any questions, please contact me or have your staff contact Cynthia Stahl at 215-814-2180.

Sincerely,



Marcia L. Spink, Associate Director
Office of Air Programs



**DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF AIR QUALITY**

CECIL H. UNDERWOOD
GOVERNOR

John H. Johnston, Chief

MICHAEL P. MIANO
DIRECTOR

August 5, 1998

Ms. Judy Cooper
Director Administrative Law
Secretary of State
Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

RE: 45CSR8, 45CSR9, 45CSR16, 45CSR24, 45CSR25, 45CSR33, 45CSR34, 45CSR36
Agency-Approved Rules -- Office of Air Quality

Dear Ms. Cooper:

Pursuant to our telephone conversation last week, please find attached a copy of the public hearing transcript related to each of the above-referenced agency-approved rules. These rules were filed with your office and the Legislative Rule-Making Review Committee on July 31, 1998, and August 3, 1998. We would appreciate your appending the copy with the appropriate rule package previously filed.

As always, we appreciate your assistance and cooperation in this and other rule-making matters. If you have any questions, please call me at my office (304) 558-1213.

Sincerely,

A handwritten signature in cursive script that reads "Karen G. Watson".

Karen G. Watson,
Attorney

KWG/mes
attachments

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

In the matter of:

PUBLIC HEARING ON PROPOSED LEGISLATIVE RULE

45 CSR 9 "Rules Pertaining to Ambient Air Quality
Standards for Carbon Monoxide and Ozone"

Transcript of proceedings had at a public hearing in the above-styled matter taken by Missy L. Young, Certified Court Reporter and Commissioner for the State of West Virginia, at the West Virginia Division of Environmental Protection, Office of Air Quality, Conference Room, 1558 Washington Street, East, Charleston, West Virginia, 25305, commencing at 6:02 p.m., on the 21st day of July 1998, pursuant to notice.

P R O C E E D I N G S

1
2 MS. CHANDLER: This public hearing will
3 now come to order on this 21st day of July, 1998, in the
4 conference room of the West Virginia Division of
5 Environmental Protection, Office of Air Quality, located
6 at 1558 Washington Street, East, Charleston, West
7 Virginia.

8 The purpose of the public hearing is to
9 hear discussions on the proposed rules filed in the
10 Secretary of State's Office on June 18, 1998 and noticed
11 in the State Register on June 18, 1998. The legislative
12 rules are 45CSR8, 45CSR9, 45CSR16, 45CSR24, 45CSR25,
13 45CSR22, 45CSR34 and 45CSR36. The rules were noticed in a
14 Class I legal advertisement in both the Charleston Daily
15 Mail and Charleston Gazette, and notice was also sent to
16 various individuals and organizations.

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

20 By way of introduction, my name is Jeanne
21 Chandler of the Public Information Office of the West
22 Virginia Division of Environmental Protection. I will be
23 the moderator for these proceedings.

1 In order to obtain separate transcripts
2 for each of the rules, the hearing procedure this evening
3 will be to introduce each rule individually, allow time
4 for oral comments and close the hearing for that
5 particular rule. Written comments for any rule may be
6 submitted at the end of this public hearing tonight. For
7 those of you wishing to make formal comments, a sign-up
8 sheet was provided to the right of me. Please sign up now
9 if you have not already done so. I remind you that the
10 comment period will end at the close of the public
11 hearing.

12 The court reporter is Ms. Missy Young,
13 Q & A Court Reporters, Inc. If anyone desires a
14 transcript of this proceeding, please contact Ms. Young at
15 937-2555.

16 The purpose of the public hearing is to
17 hear discussions on proposed Rule 45CSR9, "Rules
18 Pertaining to Ambient Air Quality Standards for Carbon
19 Monoxide and Ozone." The purpose of this rule is to
20 establish ambient air quality standards for carbon
21 monoxide and ozone, equivalent to those national primary
22 and secondary ambient air quality standards established by
23 the U. S. EPA. That's the United States Environmental

1 Protection Agency, for the record, and I'll continue to
2 say U. S. EPA.

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

15 In accordance with Sections 108 and 109 of
16 the Clean Air Act, EPA has reviewed the air quality
17 criteria and national ambient air quality standards for
18 ozone and particulate matter. Based on these reviews, the
19 EPA revised the standards for both classes of pollutants.

20 Ozone and related pollutants have long
21 been recognized, in both clinical and epidemiological
22 research, to affect public health. The revised standard
23 would provide protection for children and other at-risk

1 populations against a wide range of ozone-induced health
2 effects, including decreased lung function, primarily in
3 children active outdoors; increased respiratory symptoms,
4 particularly in highly sensitive individuals; hospital
5 admissions and emergency room visits for respiratory
6 causes among children and adults with pre-existing
7 respiratory disease, such as asthma; inflammation of the
8 lung and possible long-term damage to the lungs.

9 EPA revised the national ambient air
10 quality standards for particulate matter and for ozone,
11 thereby necessitating the proposed revisions to the
12 corresponding state counterpart rules. The State of West
13 Virginia has filed a petition for review with the Court of
14 Appeals for the District of Columbia Circuit challenging
15 the final rules that establish both standards. The
16 challenge to the ozone standards has been assigned Case
17 No. 97-1566, consolidated with 97-1441.

18 The Division of Environmental Protection,
19 Office of Air Quality, is going forward with the
20 promulgation of this proposed rule which adopts the new
21 federal standards pending the outcome of the legal
22 challenge. If the Court rules in the State's favor, the
23 proposed state rule may be withdrawn or modified

1 accordingly. In addition, the Office of Air Quality
2 wishes to point out that a minor technical amendment will
3 be made to the briefing document filed with the proposed
4 rule clarifying that, although the proposed rule is the
5 same in substance as the federal counterpart regulation,
6 it does not actually incorporate by reference the
7 provisions of the federal regulation.

8 The floor is now open for public comment.
9 Please identify yourself and affiliation, if any, prior to
10 making any comments.

11 (No response.)

12 MS. CHANDLER: There being nothing
13 further, this public meeting for 45CSR9 is concluded.

14 (WHEREUPON, the public hearing
15 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
3rd day of August 1998.



Certified Court Reporter
Commissioner for the State of West Virginia

My commission expires April 15, 2008.