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MICHAEL P. MIANO
COMMISSIONER

December 18, 1998

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

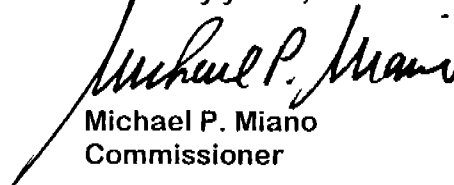
RE: 45CSR9 - "Rules Pertaining to Ambient Air Quality Standards
for Carbon Monoxide and Ozone"

Dear Ms. Cooper:

This is to advise that I am giving approval to file the above-referenced legislative rule with your Office and the Legislative Rule-Making Review Committee as Notice of Rule Modification of a Proposed 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: John Johnston
Karen Watson
Carrie Chambers

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

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OFFICE OF
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 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.~~

ANALYSIS OF PROPOSED LEGISLATIVE RULE

Agency: Office of Air Quality
Subject: Ambient Air Quality Standards for Carbon Monoxide and Ozone
CSR Cite: 45CSR9
Counsel: JAA

PERTINENT DATES

Filed for public comment: June 15, 1998
Public comment period ended: July 21, 1998
Filed following public comment period: July 31, 1998
Filed LRMRC: July 31, 1998
Filed as emergency: n/a

Fiscal Impact: None.

ABSTRACT

Brief Summary

This rule establishes air quality standards for carbon monoxide and ozone. This rule is equivalent to the national ambient air quality standards established by the EPA for these two pollutants. The changes to this rule are to update the rule to reflect changes in federal requirements.

Section Summary

Section 1.1 has been amended to state the EPA Director has discretion in modifying ambient air quality standards for carbon monoxide and ozone emissions, that when necessary to protect public health from any known or anticipated adverse effects of a pollutant.

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Definitions for "person," "hydrocarbons" and "standard conditions" have been deleted.

Section 4.1.b. has been amended to alter the technique for measuring ozone. Sections 4.1.c. and 5.3 have been deleted. These sections establish the methods for measuring "hydrocarbons."

Section 5.2 is amended to incorporate the federal method for measuring ozone concentrations.

AUTHORITY

Statutory authority: W.Va. Code, §22-5-1, which reads as follows:

(a) The director is authorized:

(4) To promulgate legislative rules in accordance with the provisions of chapter twenty-nine-a of this code not inconsistent with the provisions of this article, relating to the control of air pollution: Provided, That no rule of the director shall specify a particular manufacturer of equipment nor a single specific type of construction nor a particular method of compliance except as specifically required by the "Federal Clean Air Act," as amended, nor shall any such rule apply to any aspect of an employer-employee relationship: Provided, however, That no legislative rule or program of the director hereafter adopted shall be any more stringent than any federal rule or program except to the limited extent that the director first makes a specific written finding for any such departure that there exists scientifically supportable evidence for such rule or program reflecting factors unique to West Virginia or some area thereof....

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

Yes.

VIII. OTHER.

The Office of Air Quality [OAQ] has submitted proposed modifications to the rule as a result of EPA comments regarding the

proposed rule. The EPA comments were not received prior to the close of the thirty day comment period, and the suggested change is not contained in the filed rule. The rule as proposed allows the Director of DEP to chose alternative methods of measuring carbon monoxide, besides the method contained in federal regulations. The EPA stated that there was no discretion in what measuring methods would be allowed. The OAQ is proposing to make this correction and has asked that the Committee to accept this change as a modification.



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WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

OFFICE OF THE WEST VIRGINIA
SECRETARY OF STATE

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*Senator Mike Ross, Co-Chairman
Delegate Mark Hunt, Co-Chairman
Debra A. Graham, Counsel*

December 15, 1998

*Joseph A. Altizer, Associate Counsel
Rita Pauley, Associate Counsel
Teri Anderson, Administrative Assistant*

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: John H. Johnston
Office of Air Quality
1558 Washington St., East
Charleston, WV 25311

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Rules Pertaining to Ambient Air Quality Standards for Carbon Monoxide Ozone, 45CSR9**

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
 - (a) as originally filed
 - (b) as modified by the agency
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached.