

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

FORM #3

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Aug 6 3 27 PM '99
OFFICE OF THE SECRETARY OF STATE
WEST VIRGINIA

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: 10

TITLE OF RULE BEING AMENDED: "To Prevent and Control Air Pollution from the
Emission of Sulfur Oxides"

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.

Karen J. Watson, Attorney
Authorized Signature

5/16.60



Executive Office
#10 McJunkin Road
Nitro, WV 25143-2506
Telephone: (304) 759-0515
Fax: (304) 759-0526

West Virginia Bureau of Environment

Cecil H. Underwood
Governor

Michael P. Miano
Commissioner

July 29, 1999

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

RE: 45CSR10 - "To Prevent and Control Air Pollution From the Emission of Sulfur Oxides"

Dear Ms. Cooper:

This letter is to give my approval for filing of the above-referenced rule with your Office and the Legislative Rule-Making Review Committee as "Notice of an Agency-Approved Rule."

Your cooperation in this matter is very much appreciated. If you should have questions or need additional information, please call Carrie Chambers in my office at 759-0515.

Sincerely yours,


Michael P. Miano
Commissioner

MPM:cc

Attachment

cc: Skipp Kropp
Karen Watson
Carrie Chambers

Questionnaire

DATE: August 6, 1999

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

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

LEGISLATIVE RULE TITLE: 45CSR10 "To Prevent and Control Air Pollution from Emission of Sulfur Oxides"

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, 1999 and July 14, 1999

- b. What other notice, including advertising, did you give of the hearing?
 - I. Class I legal advertisement, *Charleston Daily Mail* and *Charleston Gazette*
 - II. Sent a copy of the Public Notice to our agency mailing list.
 - III. DEP's "Public Notice Bulletin" (June and July issues)
 - IV. Public Notices placed on agency's Web site:
<http://www.dep.state.wv.us/oaq/>
 - V. Press Release

- c. Date of Public Hearing (s) or Public Comment Period ended:
Public Hearing -- July 19, 1999
Public Comment Period ended -- July 28, 1999

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X No comments received _____

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

 August 6, 1999

f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all written correspondence regarding this rule: (Please type)

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

g. **IF DIFFERENT from item 'f'**, please give Name, title, address and phone number (s) of agency person (s) who wrote and/or has responsibility for the contents of this rule: (Please type)

 See "f" above

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

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

N/A

- 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



CHARLESTON NEWSPAPERS

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 Charleston, West Virginia 25330
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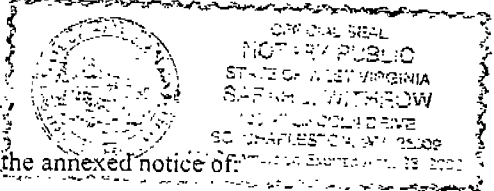
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			REFERENCE NBR	PURCHASE ORDER #					
07/17	LEGF	GZ	COMMENT PERIOD 656084001		L455179	1X1838 18.38	5.83	107. ^{.16} _{.07}	
07/17	LEGF	DM	COMMENT PERIOD 656084001		L455179	1X1838 18.38	5.83	107. ^{.16} _{.07}	214. ^{.32} _{.14}
TOTAL INVOICE AMOUNT									214. ^{.32} _{.14}

State of West Virginia,

AFFIDAVIT OF PUBLICATION

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



COMMENT PERIOD
 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 JULY 1999. Published during the following dates: 07/17/99-07/17/99
 Subscribed and sworn to before me this 20 day of July
 Printers fee \$ 214.14

Sandra Ligg
 Notary Public of Kanawha County, West Virginia

WV DIV OF ENVIR PROTECT
 OFFICE OF AIR QUALITY ANNEX
 1999 JUL 29 P 3:08
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NOTICE OF EXTENSION OF PUBLIC COMMENT PERIOD

The West Virginia Division of Environmental Protection, Office of Air Quality, hereby provides notice of the extension of the public comment period previously established for proposed revisions to the following legislative rules:

45CSR1 "To Prevent and Control Air Pollution from Coal Refuse Disposal Areas"

45CSR2 "To Prevent and Control Particulate Air Pollution from Combustion of Fuel in Indirect Heat Exchangers"

45CSR3 "To Prevent and Control Air Pollution from the Operation of Hot Mix Asphalt Plant"

45CSR4 "To Prevent and Control the Discharge of Air Pollutants into the Open Air Which Causes or Contributes to an Objectionable Odor or Odors"

45CSR5 "To Prevent and Control Air Pollution from the Operation of Coal Preparation Plants, Coal Handling Operations and Coal Refuse Disposal Areas"

45CSR6 "To Prevent and Control Air Pollution from Combustion of Refuse"

45CSR7 "To Prevent and Control Particulate Matter Air Pollution from Manufacturing Processes and Associated Operations"

45CSR10 "To Prevent and Control Air Pollution from the Emission of Sulfur Oxides"

45CSR12 "Ambient Air Quality Standard for Nitrogen Dioxide"

45CSR16 "Standards of Performance for New Stationary Sources Pursuant to 40 CFR Part 60"

45CSR17 "To Prevent

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and Control Particulate Matter Air Pollution from Materials Handling, Preparation, Storage and Other Sources of Fugitive Particulate Matter"

45CSR18 "To Prevent and Control Particulate Air Pollution from Director Meat-Firing Devices"

45CSR23 "To Prevent and Control Emissions from Municipal Solid Waste Landfills"

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"

Upon authorization and promulgation of revisions, a substantial portion of the requirements of 45CSR1 will be incorporated into 45CSR5.

Upon completion of the legislative rule-making process, rules 45CSR1 and 45CSR18 of the Office of Air Quality will have been repealed.

Upon authorization and promulgation of revisions to 45CSR2, 45CSR3, 45CSR5, 45CSR6, 45CSR7, 45CSR10 and 45CSR12, the Office of Air Quality will seek federal approval of the rule change by the U.S. Environmental Protection Agency for inclusion in the State Implementation Plan for the Federal Clean Air Act.

Upon authorization and promulgation of revisions to 45CSR4 and 45CSR17, the Office of Air Quality will not seek federal approval by the U.S. Environmental Protection Agency for inclusion in the State Implementation Plan for the Federal Clean Air Act.

Upon authorization and promulgation of revisions to 45CSR16 and 45CSR34,

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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.

Upon authorization and promulgation of revisions to 45CSR25, the rule will be submitted to the U.S. Environmental Protection Agency for approval as part of the State Hazardous Waste Management Program.

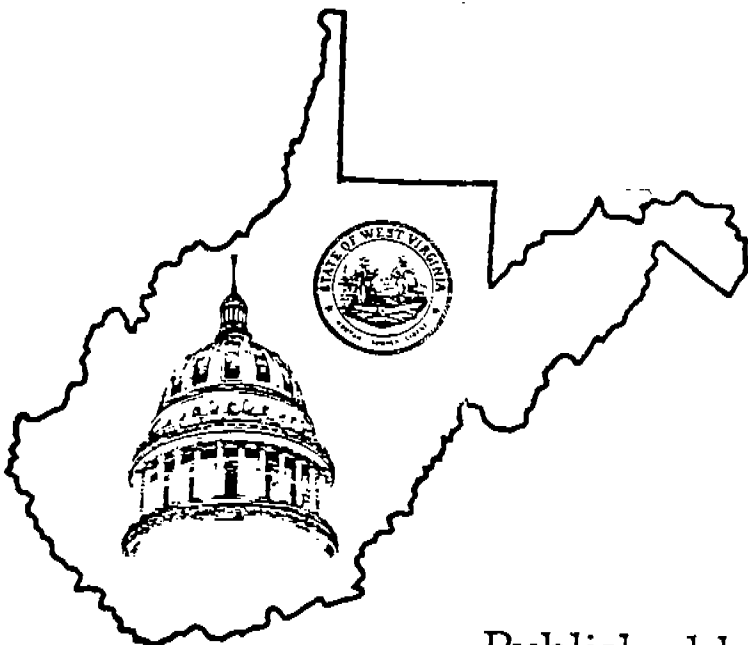
Upon authorization and promulgation of revisions to 45CSR23, the rule will be submitted to the Environmental Protection Agency as part of the State's Plan for Municipal Solid Waste (MSW) Landfills.

Upon authorization and promulgation of revisions to 45CSR33, the rule will be submitted to the Environmental Protection Agency as part of the State's Acid Rain Program.

The public comment period, previously set to expire at the close of the public hearing on July 19, 1999, will be extended up to and including July 28, 1999, at 5:00 p.m. to permit the receipt of written comments, which will be made a part of the rulemaking record. The public hearing set for July 19, 1999, at 6:00 p.m. will be held as previously noticed. Comments will not be accepted by e-mail. The public may submit written comments by mail or other delivery to the Office of Air Quality through July 28th for inclusion in the rulemaking record at the following address:

Edward L. Kropp, Chief
Office of Air Quality
1558 Washington St., E.
Charleston, WV 25311-2599

Copies of the proposed legislative rules are available for public review at the Office of Air Quality's Charleston office at the above address.
(45179)



WEST VIRGINIA REGISTER

Published by Ken Hechler, Secretary of State

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Volume XVI

Issue 29

July 16, 1999

Pages 1242-1296

A Weekly Publication

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

www.secretary.state.wv.us/sos

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CHRONOLOGICAL INDEX, VOLUME XVI ISSUE 28

PROPOSED RULES FILED FOR PUBLIC HEARING

<u>AGENCY</u>	<u>RULE/TYPE</u>	<u>AUTHORITY</u>	<u>HEARING/COMMENT PERIOD/LOCATION</u>
Air Quality (45-2)	To Prevent & Control Particulate Air Pollution from Combustion of Fuel in Indirect Heat Exchangers Legislative	§22-5-1 et seq.	July 28, 1999, 5:00 p.m. Extension of Written Comments Only: Edward L. Kropp, Chief Ofc of Air Quality 1558 Washington St E Charleston WV 25311-2599
Air Quality (45-3)	To Prevent & Control Air Pollution from the Operation of Hot Mix Asphalt Plants Legislative	§22-5-1 et seq.	July 28, 1999, 5:00 p.m. Same as above
Air Quality (45-4)	To Prevent & Control the Discharge of Air Pollutants Into the Open Air Which Causes or Contributes to an Objectionable Odor or Odors Legislative	§22-5-1 et seq.	July 28, 1999, 5:00 p.m. Same as above
Air Quality (45-5)	To Prevent & Control Air Pollution from the Operation of Coal Preparation Plants, Coal Handling Operations & Coal Refuse Disposal Areas Legislative	§22-5-1 et seq.	July 28, 1999, 5:00 p.m. Same as above
Air Quality (45-6)	To Prevent & Control Air Pollution from Combustion of Refuse Legislative	§22-5-1 et seq.	July 28, 1999, 5:00 p.m. Same as above
Air Quality (45-7)	To Prevent & Control Particulate Matter Air Pollution from Manufacturing Processes & Associated Operations Legislative	§22-5-1 et seq.	July 28, 1999, 5:00 p.m. Same as above
Air Quality (45-10)	To Prevent & Control Air Pollution from the Emission of Sulfur Oxides Legislative	§22-5-1 et seq.	July 28, 1999, 5:00 p.m. Same as above
Air Quality (45-12)	Ambient Air Quality Standard for Nitrogen Dioxide Legislative	§22-5-1 et seq.	July 28, 1999, 5:00 p.m. Same as above

RULE MONITOR

AGENCY/SERIES NO	RULE	NOTICE	HEARING	EMER RULE	SEC/STATE	LRMRC- ACTION	LEGIS	FINAL FILE	EFFECTIVE
Air Quality (45-8)	Ambient Air Quality Standards for Sulfur Oxides & Particulate Matter \$2.60 Legislative	6/16/1998	7/21/1998		7/31/1998	Modified & Approved 1/12/1999 Filed 1/22/1999	HB 2533	6/1/1999	8/30/1999
Air Quality (45-9)	Rules Pertaining to Ambient Air Quality Standards for Carbon Monoxide & Ozone \$2.40 Legislative	6/16/1998	7/21/1998		7/31/1998	Modified & Approved 12/15/1998 Filed 1/5/1999	HB 2533	6/1/1999	8/30/1999
Air Quality (45-10)	To Prevent & Control Air Pollution from the Emission of Sulfur Oxides \$7.00 Legislative	6/16/1999; 7/14/1999	7/19/1999; 7/28/1999						
Air Quality (45-12)	Ambient Air Quality Standard for Nitrogen Dioxide \$5.20 Legislative	6/16/1999; 7/14/1999	7/19/1999; 7/28/1999						
Air Quality (45-16)	Standards of Performance for New Stationary Sources Pursuant to 40 CFR Part 60 \$5.60 w/out federal reg's \$22.80 w/federal reg's Legislative	6/16/1999; 7/14/1999	7/19/1999; 7/28/1999						
Air Quality (45-16)	Standards of Performance for New Stationary Sources \$2.40 Legislative	6/16/1998	7/21/1998		7/31/1998	Modified & Approved 12/15/1998 Filed 1/5/1999	HB 2533	5/20/1999	6/1/1999
Air Quality (45-17)	To Prevent & Control Particulate Matter Air Pollution from Materials Handling, Preparation, Storage & other Sources of Fugitive Particulate Matter \$5.60 Legislative	6/16/1999; 7/14/1999	7/19/1999; 7/28/1999						
Air Quality (45-18)	To Prevent & Control Particulate Air Pollution from Direct Meat-Firing Devices \$5.20 Legislative	6/16/1999; 7/14/1999	7/19/1999; 7/28/1999						

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NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE--
NOTICE OF EXTENSION OF COMMENT PERIOD

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: 10

TITLE OF RULE BEING AMENDED: To Prevent and Control Air Pollution from the
Emission of Sulfur Oxides
IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____
TITLE OF RULE BEING PROPOSED: _____

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE--
NOTICE OF EXTENSION OF COMMENT PERIOD

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: 12

TITLE OF RULE BEING AMENDED: Ambient Air Quality Standard for Nitrogen
Dioxide
IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____
TITLE OF RULE BEING PROPOSED: _____

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY
INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT
PERIOD WILL END ON July 28, 1999 AT 5:00 P.M.
ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING
ADDRESS:
Edward L. Krupp, Chief
Office of Air Quality
1558 Washington Street East
Charleston, WV 25311-2599
Edward L. Krupp, Chief

THE ISSUES TO BE HEARD SHALL BE
LIMITED TO THIS PROPOSED RULE

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Edward L. Krupp, Chief

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OTHER

NOTICE OF EXTENSION OF PUBLIC COMMENT PERIOD

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- 45CSR1 "To Prevent and Control Air Pollution from Coal Refuse Disposal Areas"
- 45CSR2 "To Prevent and Control Particulate Air Pollution from Combustion of Fuel in Indirect Heat Exchangers"
- 45CSR3 "To Prevent and Control Air Pollution from the Operation of Hot Mix Asphalt Plants"
- 45CSR4 "To Prevent and Control the Discharge of Air Pollutants into the Open Air Which Causes or Contributes to an Objectionable Odor or Odors"
- 45CSR5 "To Prevent and Control Air Pollution from the Operation of Coal Preparation Plants, Coal Handling Operations and Coal Refuse Disposal Areas"
- 45CSR6 "To Prevent and Control Air Pollution from Combustion of Refuse"
- 45CSR7 "To Prevent and Control Particulate Matter Air Pollution from Manufacturing Processes and Associated Operations"
- 45CSR10 "To Prevent and Control Air Pollution from the Emission of Sulfur Oxides"
- 45CSR12 "Ambient Air Quality Standard for Nitrogen Dioxide"
- 45CSR16 "Standards of Performance for New Stationary Sources Pursuant to 40 CFR Part 60"
- 45CSR17 "To Prevent and Control Particulate Matter Air Pollution from Materials Handling, Preparation, Storage and Other Sources of Fugitive Particulate Matter"
- 45CSR18 "To Prevent and Control Particulate Air Pollution from Direct Meat-Firing Devices"
- 45CSR21 "To Prevent and Control Emissions from Municipal Solid Waste Landfills"

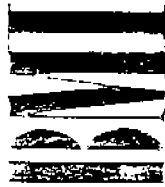
- 45CSR25 "To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities"
 - 45CSR31 "Acid Rain Provisions and Permits"
 - 45CSR34 "Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 63"
- Upon authorization and promulgation of revisions, a substantial portion of the requirements of 45CSR1 will be incorporated into 45CSR5.
- Upon completion of the legislative rule-making process, rules 45CSR1 and 45CSR18 of the Office of Air Quality will have been repealed.
- Upon authorization and promulgation of revisions to 45CSR2, 45CSR3, 45CSR5, 45CSR6, 45CSR7, 45CSR10 and 45CSR12, the Office of Air Quality will seek federal approval of the rule change by the U.S. Environmental Protection Agency for inclusion in the State Implementation Plan for the Federal Clean Air Act.
- Upon authorization and promulgation of revisions to 45CSR1 and 45CSR17, the Office of Air Quality will not seek federal approval by the U.S. Environmental Protection Agency for inclusion in the State Implementation Plan for the Federal Clean Air Act.
- Upon authorization and promulgation of revisions to 45CSR16 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.
- Upon authorization and promulgation of revisions to 45CSR25, the rule will be submitted to the U.S. Environmental Protection Agency for approval as part of the State Hazardous Waste Management Program.
- Upon authorization and promulgation of revisions to 45CSR23, the rule will be submitted to the Environmental Protection Agency as part of the State's Plan for Municipal Solid Waste (MSW) Landfills.
- Upon authorization and promulgation of revisions to 45CSR33, the rule will be submitted to the Environmental Protection Agency as part of the State's Acid Rain Program.

OTHER

The public comment period, previously set to expire at the close of the public hearing on July 19, 1999, will be extended up to and including July 28, 1999, at 5:00 p.m. to permit the receipt of written comments, which will be made a part of the rulemaking record. The public hearing set for July 19, 1999, at 6:00 p.m. will be held as previously noticed. Comments will not be accepted by e-mail. The public may submit written comments by mail or other delivery to the Office of Air Quality through July 28th for inclusion in the rulemaking record at the following address:

Edward L. Kropp, Chief
Office of Air Quality
1558 Washington Street East
Charleston, WV 25311-3599

Copies of the proposed legislative rules are available for public review at the Office of Air Quality's Charleston office at the above address.



Stuart Rosen
Senior Attorney

July 13, 1999

BY OVERNIGHT MAIL

Mr. Bill Harrington
Office of the Secretary of State
State Capitol Building
157K
Charleston, West Virginia 25305

Re: West Virginia Statutes, Section 47-2A-3(b)

Dear Mr. Harrington:

Pursuant to the provisions of the above statute, enclosed is a booklet containing BMI's music licensing agreements and related documents, along with a certification from our corporate secretary, which constitutes our current filing of such materials under the Act. This complete set of agreements should be substituted for the agreements filed last year.

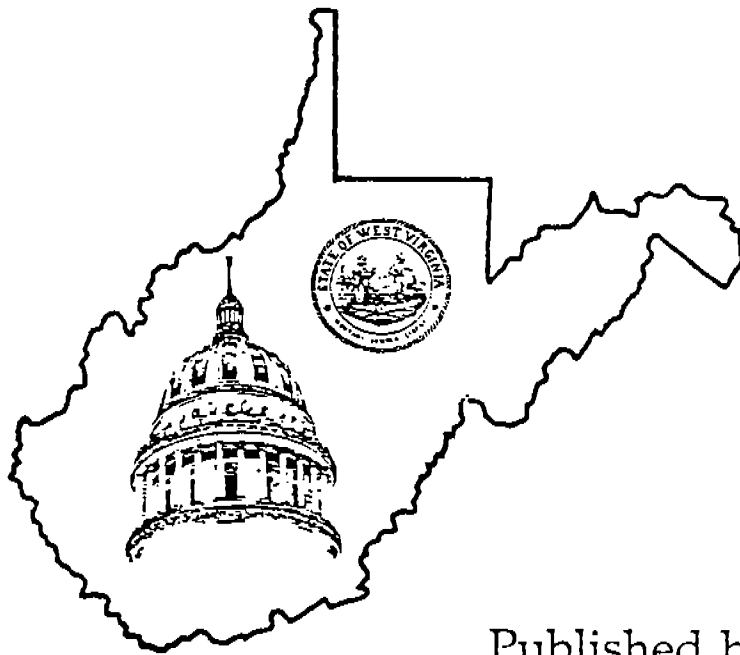
I understand that there is no fee for filing these materials.

If you have any questions or comments about the enclosures, please feel free to contact me. In addition, I would appreciate your acknowledging receipt of this letter by signing and returning an extra copy in the enclosed envelope.

Very truly yours,

RECEIVED: *U.S. State Dept.*

Stuart Rosen



WEST VIRGINIA REGISTER

Published by Ken Hechler, Secretary of State

Volume XVI

Issue 25

June 18, 1999

Pages 1026-1084

A Weekly Publication

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
www.secretary.state.wv.us/sos*

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CHRONOLOGICAL INDEX VOLUME XVI ISSUE 25

PROPOSED RULES FILED FOR PUBLIC HEARING

<u>AGENCY</u>	<u>RULE/TYPE</u>	<u>AUTHORITY</u>	<u>HEARING/COMMENT PERIOD/LOCATION</u>
Air Quality (45-2)	To Prevent & Control Particulate Air Pollution from Combustion of Fuel in Indirect Heat Exchangers Legislative	§§22-5-1 et seq.	July 19, 1999, 6:00 p.m. Office of Air Quality - Conference Rm 1558 Washington Street East Charleston, WV 25311 Written Comments to: Edward L Kropp, Chief Office of Air Quality 1558 Washington Street East Charleston, WV 25311
Air Quality (45-3)	To Prevent & Control Air Pollution from the Operation of Hot Mix Asphalt Plants Legislative	§§22-5-1 et seq.	July 19, 1999, 6:00 p.m. Same as Above
Air Quality (45-4)	To Prevent & Control the Discharge of Air Pollutants Into the Open Air Which Causes or Contributes to an Objectionable Odor or Odors Legislative	§§22-5-1 et seq.	July 19, 1999, 6:00 p.m. Same as Above
Air Quality (45-5)	To Prevent & Control Air Pollution from the Operation of Coal Preparation Plants, Coal Handling Operations & Coal Refuse Disposal Areas Legislative	§§22-5-1 et seq.	July 19, 1999, 6:00 p.m. Same as Above
Air Quality (45-6)	To Prevent & Control Air Pollution from Combustion of Refuse Legislative	§§22-5-1 et seq.	July 19, 1999, 6:00 p.m. Same as Above
Air Quality (45-7)	To Prevent & Control Particulate Matter Air Pollution from Manufacturing Processes & Associated Operations Legislative	§§22-5-1 et seq.	July 19, 1999, 6:00 p.m. Same as Above
Air Quality (45-10)	To Prevent & Control Air Pollution from the Emission of Sulfur Oxides Legislative	§§22-5-1 et seq.	July 19, 1999, 6:00 p.m. Same as Above

RULE MONITOR

AGENCY/SERIES NO	RULE	NOTICE	HEARING	EMER RULE	SEC/STATE	LRMRC-ACTION	LEGIS	FINAL FILE	EFFECTIVE
Air Quality (45-4)	To Prevent & Control the Discharge of Air Pollutants Into the Open Air which Causes or Contributes to an Objectionable Odor or Odors \$5.40 Legislative	6/16/99	7/19/99						
Air Quality (45-5)	To Prevent & Control Air Pollution from the Operation of Coal Preparation Plants, Coal Handling Operations & Coal Refuse Disposal Areas \$7.20 Legislative	6/16/99	7/19/99						
Air Quality (45-6)	To Prevent & Control Air Pollution from Combustion of Refuse \$5.80 Legislative	6/16/99	7/19/99						
Air Quality (45-7)	To Prevent & Control Particulate Matter Air Pollution from Manufacturing Processes & Associated Operations \$8.00 Legislative	6/16/99	7/19/99						
Air Quality (45-8)	Ambient Air Quality Standards for Sulfur Oxides & Particulate Matter \$2.60 Legislative	6/16/98	7/21/98		7/31/98	Modified & Approved 1/12/99 Filed 1/22/99	HB 2533	6/1/99	8/30/99
Air Quality (45-9)	Rules Pertaining to Ambient Air Quality Standards for Carbon Monoxide & Ozone \$2.40 Legislative	6/16/98	7/21/98		7/31/98	Modified & Approved 12/15/98 Filed 1/5/99	HB 2533	6/1/99	8/30/99
Air Quality (45-10)	To Prevent & Control Air Pollution from the Emission of Sulfur Oxides \$7.00 Legislative	6/16/99	7/19/99						
Air Quality (45-12)	Ambient Air Quality Standard for Nitrogen Dioxide \$5.20 Legislative	6/16/99	7/19/99						

LEGISLATIVE

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

FORM #1

Do Not Mark In This Box

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 X NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 10

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

Emission of Sulfur Oxides"

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

DATE OF PUBLIC HEARING: July 19, 1999 TIME: 6:00 p.m.

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

1558 Washington Street East

Charleston, WV 25311

COMMENTS LIMITED TO: ORAL WRITTEN BOTH X

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

Office of Air Quality

1558 Washington Street East

Charleston, WV 25311

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

Karen G. Watson
Karen G. Watson - Attorney

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

FORM #1

Do Not Mark In This Box

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 X NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 12

TITLE OF RULE BEING AMENDED: "Ambient Air Quality Standard for Nitrogen Dioxide"

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

DATE OF PUBLIC HEARING: July 19, 1999 TIME: 6:00 p.m.

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

1558 Washington Street East

Charleston, WV 25311-2999

COMMENTS LIMITED TO: ORAL WRITTEN BOTH X

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

Office of Air Quality

1558 Washington Street East

Charleston, WV 25311-2999

Karen G. Watson
Karen G. Watson - Attorney

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

OTHER

NOTICE OF PUBLIC HEARING AND
PUBLIC COMMENT PERIOD

On Monday, July 19, 1999 beginning at 6:00 p.m., the West Virginia Division of Environmental Protection, Office of Air Quality will hold a public hearing on proposed revisions to the following legislative rules:

- 45CSR1 "To Prevent and Control Air Pollution from Coal Refuse Disposal Areas"
- 45CSR2 "To Prevent and Control Particulate Air Pollution from Combustion of Fuel In Indirect Heat Exchangers"
- 45CSR3 "To Prevent and Control Air Pollution from the Operation of Hot Mix Asphalt Plants"
- 45CSR4 "To Prevent and Control the Discharge of Air Pollutants into the Open Air Which Causes or Contributes to an Objectionable Odor or Odors"
- 45CSR5 "To Prevent and Control Air Pollution from the Operation of Coal Preparation Plants, Coal Handling Operations and Coal Refuse Disposal Areas"
- 45CSR6 "To Prevent and Control Air Pollution from Combustion of Refuse"
- 45CSR7 "To Prevent and Control Particulate Matter Air Pollution from Manufacturing Processes and Associated Operations"
- 45CSR10 "To Prevent and Control Air Pollution from the Emission of Sulfur Oxides"
- 45CSR12 "Ambient Air Quality Standard for Nitrogen Dioxide"
- 45CSR16 "Standards of Performance for New Stationary Sources Pursuant to 40 CFR Part 60"
- 45CSR17 "To Prevent and Control Particulate Matter Air Pollution from Materials Handling, Preparation, Storage and Other Sources of Fugitive Particulate Matter"
- 45CSR18 "To Prevent and Control Particulate Air Pollution from Direct Meat-Firing Devices"

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45CSR23 "To Prevent and Control Emissions from Municipal Solid Waste Landfills"

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"

Upon authorization and promulgation of revisions, a substantial portion of the requirements of 45CSR1 will be incorporated into 45CSR5.

Upon completion of the legislative rule-making process, rules 45CSR1 and 45CSR18 of the Office of Air Quality will have been repealed.

Upon authorization and promulgation of revisions to 45CSR2, 45CSR3, 45CSR5, 45CSR6, 45CSR7, 45CSR10 and 45CSR12, the Office of Air Quality will seek federal approval of the rule change by the U. S. Environmental Protection Agency for inclusion in the State Implementation Plan for the federal Clean Air Act.

Upon authorization and promulgation of revisions to 45CSR4 and 45CSR17, the Office of Air Quality will not seek federal approval by the U. S. Environmental Protection Agency for inclusion in the State Implementation Plan for the federal Clean Air Act.

Upon authorization and promulgation of revisions to 45CSR16 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.

Upon authorization and promulgation of revisions to 45CSR25, the rule will be submitted to the U. S. Environmental Protection Agency for approval as part of the State Hazardous Waste Management Program.

Upon authorization and promulgation of revisions to 45CSR23, the rule will be submitted to the Environmental Protection Agency as part of the State's Plan for Municipal Solid Waste (MSW) Landfills.

Upon authorization and promulgation of revisions to 45CSR33, the Office of Air Quality will submit this rule to the U. S. Environmental Protection Agency as part of the State's Acid Program.

OTHER

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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 until the close of the hearing on July 19th and will be made a part of the rulemaking record. Comments will not be accepted by e-mail. The public may also submit written comments by mail or other delivery to the Office of Air Quality through July 19th for inclusion in the rulemaking record at the following address:

Edward L. Kropp, 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, 1999 at the Office of Air Quality's Charleston office.

NOTICE OF PUBLIC HEARING

On Thursday, July 22, 1999 beginning at 7:00 p.m., the Office of Air Quality of the West Virginia Division of Environmental Protection (WVDEP) will hold a public hearing on proposed revisions to the State Implementation Plan (SIP) to attain and maintain compliance with the National Ambient Air Quality Standards (NAAQS) for sulfur dioxide (SO₂). The proposed plan revisions affect American Electric Power's Kanawha Plant, Columbian Chemical Company, PPG Industries Inc. and Bayer Corporation, all of which are located in Marshall County, West Virginia.

The WVDEP proposes to enter Consent Orders with the aforementioned companies or, if necessary, seek modification to rule 45CSR10 "To Prevent and Control Air Pollution from the Emission of Sulfur Oxides" to establish new sulfur dioxide emission limits or other requirements necessary to assure attainment of the sulfur dioxide NAAQS in Marshall County.

Upon entry of the proposed Consent Orders and/or promulgation of a revised 45CSR10, these documents, in conjunction with supporting documentation and analysis will be submitted to the United States Environmental Protection Agency for incorporation into the West Virginia State Implementation Plan under the federal Clean Air Act as amended.

The hearing will be held at the Grave Creek Mount Historical Site located at 801 Jefferson Avenue, Moundsville, WV 26041. Written and oral testimony by all interested parties will be accepted and made part of the record, which will be closed at the conclusion of the public hearing. Substantial comments by electronic mail will not be accepted.

Persons interested in submitting written comments prior to the hearing should send them to:

Tim J. Carroll, Assistant Chief
Office of Air Quality
Northern Panhandle Regional Office
1911 Warwood Avenue
Wheeling, WV 26003

Copies of the draft Consent Orders and supporting documentation will be available for public review at the following locations on and after June 21, 1999:

Office of Air Quality
1558 Washington Street, East
Charleston, WV 25311

**BUREAU OF ENVIRONMENT
DIVISION OF ENVIRONMENTAL PROTECTION
BRIEFING DOCUMENT**

RULE TITLE: 45CSR10 - "To Prevent and Control Air Pollution from the Emission
of Sulfur Oxides"

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

B. SUMMARY OF RULE:

45CSR10 "To Prevent and Control Air Pollution from the Emissions of Sulfur Oxides" sets weight emissions standards for sulfur oxides from fuel burning units and manufacturing processes. The rule establishes monitoring, record keeping and reporting requirements and requirements for the registration of alternative emission limits for multiple stacks at a single source.

The revisions to 45CSR10 contained herein are intended to update definitions, clarify and streamline the monitoring, record keeping, and reporting requirements, eliminate unnecessary requirements and incorporate USEPA recommendations. The revisions also provide greater flexibility for the owner/operator to adjust emission limits for individual stacks. Other revisions are intended to harmonize this rule with other rules of the Office of Air Quality.

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:

The purpose of 45CSR10 is to establish weight emission standards for sulfur oxides from fuel burning units and manufacturing processes. 45CSR10 is part of the West Virginia State Implementation Plan (SIP) approved by the USEPA to assure attainment and maintenance of attainment with the National Ambient Air Quality Standards for sulfur oxides. The revisions proposed herein were initiated by the Office of Air Quality as part of a broad effort to modernize and streamline all the Office rules. The current revision process is also intended to update and harmonize this rule with other rules of the Office of Air Quality. The proposed revisions are the result of a thorough review in a stakeholder process that was inclusive of the Office of Air Quality, representatives of the regulated community, concerned citizens and the environmental community.

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

There is no federal counterpart regulation; therefore, a determination of stringency is not 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 June 10, 1999 meeting, the Environmental 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

ENVIRONMENTAL PROTECTION ADVISORY COUNCIL

June 10, 1999, Director's Conference Room, Nitro

The sixteenth meeting of the DEP Advisory Council was held Thursday, June 10, 1999, in the Director's Conference Room located in Nitro. Chairman Mike Miano called the meeting to order at 10:00 a.m.

ATTENDING:

Advisory Council Members:

Mike Miano, Chairman
Jacqueline Hallinan
William Raney
Rick Roberts
William Samples

Environmental Protection:

Bill Adams	Pam Nixon
Andy Gallagher	Rocky Parsons
Tony Grbac	Cap Smith
Randy Huffman	Charlie Sturey
Mike Johnson	Barbara Taylor
Mike Lewis	Karen Watson
Robert Keatley	Mike Zeto

1) Review and Approval of March 22, 1999 Minutes. Chairman Miano called the meeting to order at 10:00 a.m. The first item on the agenda was approval of the minutes of the March 22 Advisory Council; they were approved as written.

2) Discussion of Proposed Rule Amendments - 2000 Legislative Session. In accordance with WV Code §22-1-1(c), and DEP's new rule-making procedure that was implemented by Director Miano in September 1998 to involve the Advisory Council in DEP's rule-making process as early as possible to enable the Council to review, comment, and make recommendations to the Director on DEP's proposed legislative rule changes before they are filed for public hearing, the following proposed rules were brought to the Council's attention.

Chairman Miano said he would like to begin by saying he hoped all Council members had received their draft rules by E-mail without any complications and they were able to review them before the meeting. He informed the Council that due to the large number of rules being proposed for the 2000 Legislative Session, DEP's program offices would review them with the

Council as thoroughly as possible, in the allotted time frame, and try to answer any questions or concerns the Council may have.

The following Office of Air Quality's proposed rule amendments were discussed by Karen Watson, OAQ, with assistance from Richard Keatley, also from the OAQ office:

- 45CSR1 - "TO PREVENT AND CONTROL AIR POLLUTION FROM COAL REFUSE DISPOSAL AREAS"
- 45CSR2 - "TO PREVENT AND CONTROL PARTICULATE AIR POLLUTION FROM COMBUSTION OF FUEL IN INDIRECT HEAT EXCHANGERS"
- 45CSR3 - "TO PREVENT AND CONTROL AIR POLLUTION FROM THE OPERATION OF HOT MIX ASPHALT PLANTS"
- 45CSR4 - "TO PREVENT AND CONTROL THE DISCHARGE OF AIR POLLUTANTS INTO THE OPEN AIR WHICH CAUSES OR CONTRIBUTES TO AN OBJECTIONABLE ODOR OR ODORS"
- 45CSR5 - "TO PREVENT AND CONTROL AIR POLLUTION FROM THE OPERATION OF COAL PREPARATION PLANTS, COAL HANDLING OPERATIONS AND COAL REFUSE DISPOSAL AREAS"
- 45CSR6 - "TO PREVENT AND CONTROL AIR POLLUTION FROM COMBUSTION OF REFUSE"
- 45CSR7 - "TO PREVENT AND CONTROL PARTICULATE MATTER AIR POLLUTION FROM MANUFACTURING PROCESSES AND ASSOCIATED OPERATIONS"
- 45CSR10 - "TO PREVENT AND CONTROL AIR POLLUTION FROM THE EMISSION OF SULFUR OXIDES"
- 45CSR12 - "AMBIENT AIR QUALITY STANDARD FOR NITROGEN DIOXIDE"
- 45CSR16 - "STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES PURSUANT TO 40 CFR PART 60"
- 45CSR17 - "TO PREVENT AND CONTROL PARTICULATE MATTER AIR POLLUTION FROM MATERIALS HANDLING, PREPARATION, STORAGE AND OTHER SOURCES OF FUGITIVE PARTICULATE MATTER"
- 45CSR18 - "TO PREVENT AND CONTROL PARTICULATE AIR POLLUTION FROM DIRECT MEAT-FIRING DEVICES"
- 45CSR23 - "TO PREVENT AND CONTROL EMISSIONS FROM MUNICIPAL SOLID WASTE LANDFILLS"
- 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"

Karen began by bringing the Council up to date on the status of two OAQ rules that were filed during the last session (or late in the session). 45CSR8 revised the ambient air quality for sulfur oxides and particulate matter, and 45CSR9 pertained to ambient air quality standards for carbon monoxide and ozone. The DC Circuit Court of Appeals has ordered EPA to show how they arrived at the new standards - EPA may go back to the previous standards. Karen also apprised the Council on the N_{ox} State Implementation Plan. The Circuit Court stayed the implementation of that rule and there are no plans to develop any other amendments in the

immediate future. 45CSR28, which is the emissions trading rule that was filed late in the 1999 Session, was not taken up by the Legislature, but plans are to put the rule on the July agenda of the Interim Legislative Committee.

Karen explained the reason for the unusually large number of DEP rules that are being filed for the next Legislative Session. She informed the Council that several of the rules were outdated and were amended for consistency and streamlining, and are a result of months of on-going meetings with stakeholders -- involving both the regulated community and citizens. A particulate matter and sulfur oxide work group was also involved. Those rule amendments as a result of the stakeholders process include: 45CSR1 (which is being repealed and replaced with language in 45CSR5), 45CSR2, 3, 4, 5, 6, 7, 10, 12, 17, and 18 (which is being repealed since the rule is no longer deemed necessary). The amendments to the remainder of the rules, 45CSR16, 23, 25, 33, and 34 were necessary to adopt by reference definitions, clarifications, technical amendments, etc., recently adopted by US EPA.

After several minutes of discussion, the Advisory Council recommended to the Director that the following amendments be made to the OAQ rules:

Mr. Samples pointed out that 45CSR2 and 45CSR7 contain different definitions for the term "opacity." The agency responded that this discrepancy was inadvertent and the language should be as it is in 45CSR2. The agency agreed to revise 45CSR7, subsection 2.23, accordingly.

Mr. Larry Harris was unable to attend the meeting; however, he expressed the following comments on 45CSR10 and 45CSR33 by e-mail. He stated that the State's rules should be more stringent than the federal counterpart regulations, since the State's streams are being adversely impacted. The agency responded that, at this point in time, it does not possess sufficient evidence to make the written finding that is required by WV Code §22-2-3a before promulgating a rule which is more stringent than a counterpart federal regulation.

Cap Smith and Mike Zeto discussed the following Office of Waste Management proposed rule amendments:

- 33CSR2 - "Sewage Sludge Management Rule"
- 33CSR20 - "Hazardous Waste Management Rule"

Mike Zeto briefed the Council on the proposed amendments to 33CSR2. He stated that in 1996 the Legislature mandated DEP to perform a study on soil limitations for sewage sludge land application sites. These amendments (as a result of the study) were to be proposed by June 30, 1999. Other amendments to the rule include specifying the analytical method used for soil analysis, placing conditions on variances from the soil limits for land application sites, providing an incentive for municipalities to produce higher quality compost products, and adjusting the sewage sludge limits for four metals. Mr. Zeto told the Council these amendments are being proposed to update other related areas of the rule in an attempt to provide better management of sewage sludge within the state.

Cap Smith discussed 33CSR20 with the Council. He informed the Council that amendments are proposed in section 2 of the rule that will allow the Office of Waste Management to delist hazardous wastes, which has previously been handled by EPA. The other significant amendments that are being proposed by adoption of the Federal Register pertain to revision standards for owners and operators of closed and closing hazardous waste management facilities, post closure permit requirements, and the closure process. These amendments are referenced throughout the rule and will hopefully expedite site cleanup while maintaining environmental protection.

There were several minutes of discussion on OWM's proposed rule amendments; however, no recommendations were made to the Director concerning the amendments.

Mike Lewis, Office of Oil and Gas, discussed the following new proposed rule:

- 35CSR7 - "Well Operations - Within and Around Gas Storage Reservoirs"

Mike informed the Council that 35CSR7 is a proposed "new" rule for the O&G Office. The rule is needed to provide protection of the environment, the public, and the state's natural gas resources. It is the intent of the proposed rule to accomplish this by addressing certain operating procedures that oil and gas and gas storage operators are to use when drilling into or through a gas storage reservoir or the gas storage reservoir protective area. In order to assure absence of leaking gas, the proposed rule requires gas storage operators to conduct monitoring and inspections of gas storage wells.

There were no questions or discussion by the Council on this proposed rule.

The following proposed rules were discussed by the Office of Mining and Reclamation:

- 38CSR2 - "Surface Mining and Reclamation Rule"
- 38CSR2A - "Rules for Mining and Restoration for Sandstone, Limestone, and Sand"
- 38CSR2B - "RULES FOR MINING AND RECLAMATION OF MINERALS OTHER THAN COAL"

Ed Griffith, Office of Surface Mining, discussed the proposed amendments to the Surface Mining and Reclamation Rule. Ed told the Council that there are only minor amendments being proposed to this year's rule. The proposed definition of "woodlands" in subsection 2.136 relates to the utilization of commercial woodlands in Approximate Original Contour variance areas. This change is being proposed in order for the state to meet the federal policy that is expected to change in July 1999. The proposed amendment to change the bonding requirements of mining operations that request variances from contemporaneous reclamation to the maximum amount per acre bond (\$5,000 per acre) is found in subdivision 14.15.f. All other amendments are being proposed in order to meet the requirements of the Office of Surface Mining's program amendments.

Rocky Parsons, OMR's Philippi Office, next addressed OMR's proposed rules 38CSR2A and 2B. Rocky explained to the Council members that 38CSR2B has been in place since 1983 and regulates all minerals other than coal. However, in accordance with the requirement that separate rules for limestone, sandstone, and sand are to be promulgated, DEP is proposing

38CSR2A which will regulate only those minerals - 38CSR2B will regulate all minerals other than limestone, sandstone, sand, and coal. Both proposed rules will regulate roads, blasting, drainage control, methods of operation, excess spoil disposal, revegetation, mapping, transfer of permits, permit renewals, revisions and incidental boundary revisions. 38CSR2A will provide provisions for restoration and 38CSR2B will include provisions for reclamation. Rocky gave the Council a brief history on the roadblocks the agency has encountered in the past several years in their attempt to amend the quarry statute. He said since the agency has been unsuccessful in that approach, it has become necessary to try to accomplish this through rule making. He informed the Council of a public meeting held the previous week to discuss the two proposed rules. He said the meeting was well attended and he believes the rules were well received by everyone in attendance.

The three OMR proposed rules were discussed by the Council members. Bill Raney said that although Rocky stated that the quarry rules have been well received by industry and the citizens, he is concerned about whether there has been enough time for the review of the proposed rules after they were drafted. He believes there would be a smoother transition into the rule making process, i.e., the public hearing/comment period, etc., if there had been more involvement from outside DEP during the drafting of the rules.

Mr. Larry Harris commented by e-mail 38CSR2A and 2B. His question is whether the siltation measures include silt fences where runoff might enter streams. He said it is not apparent what best management practices are for this situation, and he wonders if it needs to be spelled out. He knows of some operations in quarries where streams muddy after rainfalls, such as the Elkins and Waco quarries near Snowshoe, and he feels this is harming the streams. Do the new rules address this?

Rocky Parsons responded by saying that design criteria for drainage control structures is found in the technical handbook. Silt fences are not adequate for sediment control. The drainage system must be designed to hold .125 ac/ft of sediment for each acre of disturbed land. All runoff must pass through a drainage control structure. There is a provision for less sediment control (1/2 factor) for certain circumstances as approved by the Director. Effluent limits as established in the NPDES permit must be met.

Tony Grbac, Office of Surface Mining, addressed the following rule:

199CSR1 - "SURFACE MINING BLASTING RULE"

Tony began by briefing the Council on the history of the Surface Mining Blasting Rule. This rule is being proposed to comply with SB681 - passed during the last session. This bill created the Office of Explosives and Blasting and the Office of Coalfield Community Development, which is under the West Virginia Development Office. The proposed rule will regulate blasting laws and rules associated with all surface-mining operations. All duties currently performed by OMR related to blasting, and all rules which now regulate blasting (38CSR2C) will be transferred to this new office. Besides regulating blasting on all surface mining operations, it will also implement and oversee pre-blast survey processes; maintain and operate a system to receive and address questions, concerns and complaints relating to mining

operations; determine the qualifications for individuals and firms performing pre-blast surveys; establish the education, training, examination and certification of blasters; administer a claims process for property damage caused by blasting; and conduct a study of blasting and make recommendations regarding any appropriate rule or code changes.

Tony explained that the revenue generated by the proposed fee in 199CSR1 (one-half cent times the number of pounds of explosive material used during the preceding month for any purpose on the surface mining operations) would fund both the offices, as required by SB681. After one year of collection, both offices are to report to the Legislature as to whether the revenue collected is sufficient to operate both offices.

After several minutes of discussion between DEP and the Council members, Bill Raney expressed his concern in filing the rule for public hearing in the specified time frame. Mr. Raney asked if anyone outside DEP has been involved in drafting the rule. OMR answered by saying the rule was drafted by several staff within OMR. Mr. Raney replied that he believes there will be serious concerns with this rule once industry has had an opportunity to review it. He believes the rule drafting process definitely needs input from firms and individuals outside DEP, and he thinks the process will go smoother once everyone has had the opportunity to address their concerns. Mr. Raney recommended that the Director withhold this rule from the list of rules DEP proposes to file for public hearing/comment period in the coming week to give all interested parties a chance to participate in drafting the rule.

After discussion of this recommendation, Chairman Miano said he believes the best approach would be to continue with the filing of the proposed rule for public hearing, start the rule in the normal process and time frame, and in the meantime he would commit to putting together a work group of interested parties to discuss the rule. If DEP feels that more time is needed once the group begins their work on the rule, he will consider the possibility of either extending the comment period or filing for another public hearing. He said he will also decide in the near future whether DEP will file the rule as an "Emergency Rule" since HB 681 will become effective on June 11.

Council members also pointed out a typographical error in subdivision 3.9.a.3. of the rule relating to cross-references that will be corrected by DEP.

Barb Taylor and Mike Johnson, Office of Water Resources, briefed Council on the following rules:

- 47CSR57A - "Groundwater Protection Standards at Steam Electric Generating Facilities"
- 47CSR26 - "Water Pollution Control Permit Fee Schedule"
- 47CSR31 - "State Water Pollution Control Revolving Fund Program Rule"

Barb described the proposed "new" rule relating to Groundwater Protection Standards at Steam Electric Generating Facilities. She noted that the rule is a result of a Notice of Intent filed on October 24, 1994, by the West Virginia Steam Electric Generation Industry, with the Director of DEP, in accordance with 47CSR57 to apply for a class variance for all West Virginia power stations and associated disposal sites. At that time, DEP provided AEP and AP with the

opportunity to conduct a four-year study to gather the necessary data to support their variance request. The objectives were met by assembling and reviewing data, estimating potential impacts to receptors, and performing an economic assessment impact analysis to the industry, commercial enterprises, and citizens at large if compliance with the Groundwater Protection Act were required without benefit of the variances. After review of the four-year study, the Director determined that granting this request for a variance at these locations would not pose adverse effects to human health or the environment. There are no human or environmental sensitive receptors between the coal storage areas or as ponds; therefore, it is unlikely there will be adverse affects. Barb gave each member a copy of the four-year study on which the Director made his determination.

Chairman Miano told Council that DEP is definitely willing to look at such cases where extensive research and study have been done by the regulated community to back up their findings before granting such variances, and believes DEP will see more studies like this in the future.

Barb next apprised the members on the proposed amendments of the Water Pollution Control Permit Fee Schedule. She stated that amendments are being proposed as a result of HB 2684, passed March 11, 1999, and effective ninety days from passage. The Director is required to implement an emergency rule to implement the fee schedule authorized by the amendments by July 1, 1999. This rule was filed as an "Emergency Rule" on June 7, 1999.

Mike Johnson, Office of Water Resources' Construction Assistance Office, briefed the Council on 47CSR31 - the Water Pollution Control Revolving Fund Program rule: The amendments to this rule are being proposed to allow the State Revolving Fund low interest terms to be extended from 20 years to 30 years for communities that qualify as "disadvantaged." There is only one other state in the country to receive such approval from EPA. Mike informed the Council that he was only recently made aware of this extension by EPA to extend the low interest loans from 20 to 30 years while attending a meeting out of state. This rule was filed as an "Emergency Rule" on May 24, 1999.

Council members unanimously agreed that Mike Johnson should be commended for gathering this information and proposing the amendment to the rule that will enable disadvantaged communities to immediately take steps toward constructing watershed projects that will provide affordable monthly sewer rates.

Open Discussion:

Chairman Miano and Council members expressed their compliments to the program offices for all their hard work, especially with the stakeholders process -- it is obvious a lot of hard work has gone into the process in order to make their efforts more productive.

Bill Raney asked a question relating to the "More or Less" Stringency statement that appears on the front of some DEP rules, but not on others, and voiced his concern if DEP is paying close attention to this, or if the same statement is appearing with all proposed rules. Carrie Chambers from the Director's Office explained that statement was once required to be included in the "General" section of each rule; however, it is now placed in the briefing document that is attached to each rule, and required by the Secretary of State's Office and the

Legislative Rule-Making Review Committee, before it is filed. She went on to explain that with the rush to get draft copies of the rules to Council members as soon as possible, some of the Briefing Documents had not been completed, but would be attached to all DEP rules before they are filed for public hearing. Chairman Miano went on to say it is his belief that all program offices are carefully scrutinizing each rule before that decision is made.

Chairman Miano thanked Council for taking time from their busy schedules to review the extensive list of DEP's proposed rules. He informed the Council that the minutes would be left open for comment until Wednesday, June 16, at which time the minutes will be attached to the rules and filed with the Secretary of State's Office and the Legislative Rule-Making Review Committee for notice of public hearing/comment period.

Before adjourning the meeting, the Council informed Chairman Miano that they would prefer beginning future meetings at 10:00 a.m., instead of the usual time of 1:00 p.m. The meeting was then adjourned at 3:30 p.m.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 45CSR10 - "To Prevent and Control Air Pollution from the Emissions of
Sulfur Oxides"

Type of Rule: X Legislative Interpretive Procedural

Agency: Office of Air Quality

Address: 1558 Washington Street, East
Charleston, WV 25311-2599

1. Effect of Proposed Rule	Annual		Fiscal Year		
	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 revisions proposed to 45CSR10 will have a negligible effect on the costs to the Office of Air Quality for continued implementation of this rule. Cost are covered under previous budget estimates.

3. Objectives of these rules: The object of this rule is to control and prevent air pollution by establishing standards for weight emissions of sulfur oxides. This rule is part of the West Virginia State Implementation Plan approved by USEPA for the attainment and maintenance of attainment of the National Ambient Air Quality Standards for sulfur oxides.

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.

The revisions proposed to rule 45CSR10 will have minimal economic impact on affected industries and in some cases may reduce costs through flexibility provided by the revisions.

C. Economic Impact on Citizens/Public at Large.

The revisions proposed to rule 45CSR10 will have no effect on citizens or the public at large.

Date: 6/11/99

Signature of Agency Head or Authorized Representative

Karen G. Watson
Karen G. Watson, Attorney

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

OFFICE OF THE GOVERNOR
SECRETARY OF STATE

SERIES 10
TO PREVENT AND CONTROL AIR POLLUTION
FROM THE EMISSION OF SULFUR OXIDES

§45-10-1. General.

1.1. Scope.

1.1.a. The purpose of ~~Series 10~~ this rule is to prevent and control air pollution from the emission of sulfur oxides.

1.1.b. Fuel Quality Goals. -- It is the intent of the Director that all persons engaged in the burning of fuel make a maximum effort to utilize the best quality fuel available regardless of the requirements of this rule.

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

1.3. Filing Date. -- ~~April 27, 1994.~~

1.4. Effective Date. -- ~~April 27, 1994.~~

1.5. Former Rules -- This legislative rule amends 45CSR10 "To Prevent and Control Air Pollution From the Emission of Sulfur Oxides" which was filed April 27, 1994, and which became effective April 27, 1994.

§45-10-2. Definitions.

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

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

2.3. ~~[RESERVED]~~ "Continuous Emission Monitoring System" means the total equipment

required for the determination of a gas concentration or emission rate, in the units of the standard.

2.4. "Director" means the ~~D~~director of the ~~D~~division of ~~E~~environmental ~~P~~protection or his or her designated representative such other person to whom the director has delegated authority or duties pursuant to W. Va. Code §§22-1-6 or 22-1-8.

2.5. "Distillate Oil" means fuel oil that complies with the specifications for fuel oil numbers 1 and 2, as defined by the American Society for Testing and Materials in ASTM D396-98, "Standard Specification for Fuel Oils".

2.4.5.6. "Equivalent Fuel Sulfur Content" means that quantity of sulfur dioxide in pounds per million British Thermal Units (BTU's) which corresponds to a given percent sulfur in fuel being burned and is calculated on the basis of one hundred percent (100%) conversion of the sulfur to sulfur dioxide and assuming that no sulfur or sulfur dioxide recovery or control measures are employed.

2.8.7. "Fuel" means any form of combustible matter (solid, liquid, vapor, or gas) that is used as a source of heat.

2.6.8. "Fuel Burning Unit" means and include any furnace, boiler apparatus, device, mechanism, stack or structure used in the process of burning fuel or other combustible material for the primary purpose of producing heat or power by indirect heat transfer. For the purposes of this rule, all fuel burning units are classified in the following categories:

2.6.8.a. Type 'a' means any fuel burning unit which has as its primary purpose the

generation of steam or other vapor to produce electric power for sale.

2.6-8. b. Type 'b' means any fuel burning unit not classified as a Type 'a' or Type 'c' unit such as industrial pulverized-fuel-fired furnaces, cyclone furnaces, gas-fired and liquid-fuel-fired units.

2.6-8. c. Type 'c' means any hand-fired or stoker-fired fuel burning unit not classified as a Type 'a' unit.

2.9. "Indirect Heat Exchanger" means a device that combusts any fuel and produces steam or heats water or any other heat transfer medium. This term includes any duct burner that combusts fuel and is part of a combined cycle system. This term does not include process heaters as defined in subsection 2.18.

2.10. "Malfunction" means any sudden and unavoidable failure of air pollution control equipment or process equipment or of a process to operate in a normal or usual manner. Failures that are caused entirely or in part by poor maintenance, careless operation or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions.

2.11. "Manufacturing Process" means any action, operation or treatment embracing chemical, industrial, or manufacturing efforts, and employing, for example, heat-treating furnaces, by-product coke plants, core-baking ovens, mixing kettles, cupolas, blast furnaces, open hearth furnaces, heating and reheating furnaces, puddling furnaces, sintering plants, electric steel furnaces, ferrous and non-ferrous foundries, kilns, stills, pipe stills, reformers, furnaces associated with manufacturing processes, driers, crushers, grinders, roasters, and equipment used in connection therewith, and all other methods or forms of manufacturing or processing that may emit sulfur dioxide or other sulfur compounds.

2.12. "Natural Gas" means (1) a naturally occurring mixture of hydrocarbon and nonhydrocarbon gases found in geologic formations beneath the earth's surface, of which the principal

constituent is methane, or (2) liquefied petroleum (LP) gas, as defined by the American Society for Testing and Materials in ASTM D1835-97, "Standard Specification for Liquefied Petroleum Gases".

2.5-13. "Person" means any and all persons, natural or artificial, including the State of West Virginia or any other state and all agencies or divisions thereof, any state political subdivision, the United States of America, any municipal, statutory, public or private corporation organized or existing under the laws of this or any other state or country, and any firm, partnership, or association of whatever nature.

2.14. "Plant" means and includes all fuel burning units, source operations, equipment and grounds utilized in an integral complex.

2.10-15. "Pollution Control Equipment" means any equipment used for collecting, confining, or converting air pollutants for the purpose of preventing or reducing the emission of these pollutants into the open air.

2.16. "Potential To Emit" for the purpose of subdivision 4.1.e means the maximum capacity of a source, on an annual basis, to emit any air pollutant under its physical and operational design, prior to any air pollution control equipment.

~~2.17. [RESERVED]~~

2.9-17. "Priority I Regions", "Priority II Regions"; and "Priority III Regions" are defined in Table 45-10A found at the end of this rule.

2.18. ~~"Division of Environmental Protection" or "DEP" means that Division of the West Virginia Division of Environmental Protection which is created by the provisions of W. Va. Code §22-1-1, et seq.~~

2.18. "Process Heater" means a device that is primarily used to heat a material to initiate or promote a chemical reaction in which the material participates as a reactant or catalyst.

~~2.12.19.~~ "Source Operation" means the last operation in a manufacturing process preceding the emission of air pollutants which operation:

~~2.12.19.~~ a. Results in the separation of the air pollutant from the process materials or in the conversion of the process materials into air pollutants; and

~~2.12.19.~~ b. Is not an air pollution abatement operation.

~~2.16.19.~~ "Stack", for the purposes of this rule, means, but is not limited to, any duct, control equipment exhaust, or similar apparatus, which vents gases and/or particulate matter into the open air.

~~2.13.20.~~ "Sulfur Dioxide" is an air pollutant which is a nonflammable, nonexplosive, colorless, gaseous molecule composed of one (1) atom of sulfur and two (2) atoms of oxygen. In concentrations of 0.3 to 1.0 parts per million and above, most people can detect it by taste; in concentrations greater than 3.0 parts per million it has a pungent, irritating odor to most people.

~~2.7.21.~~ "Waste Heat Boiler" means any boiler which derives all or part of its heat input from the waste heat of a manufacturing process operation.

2.22. Other words and phrases used in this rule, unless otherwise indicated, shall have the meaning ascribed to them in W. Va. §22-5-1 et seq.

§45-10-3. Sulfur Dioxide Weight Emission Standards for Fuel Burning Units.

3.1. Total Allowable Emission Rates for Similar Units in Priority I and Priority II Regions:
 == No person shall cause, suffer, allow, or permit the discharge of sulfur dioxide into the open air from all stacks located at one plant, measured in terms of pounds per hour, in excess of the amount determined as follows:

3.1.a. For fuel burning units of the Kammer Plant of Ohio Power Company, located in Air Quality Control Region I, the product of ~~6.82.7~~

and the total design heat inputs for such units discharging through those stacks in million British Thermal Units (BTU's) per hour.

3.1.b. For fuel burning units of the Mitchell Plant of Ohio Power Company, located in Air Quality Control Region I, the product of 7.5 and the total actual operating heat inputs for such units discharging through those stacks in million BTU's per hour.

3.1.c. For fuel burning units of the Willow Island Station of Monongahela Power Company, located in Air Quality Control Region II, the product of 2.7 and the total design heat inputs for such units discharging from those stacks in million BTU's per hour.

3.1.d. For fuel burning units of the Mt. Storm Plant of Virginia Electric and Power Company, located in Air Quality Control Region VII, the product of 2.7 and the total design heat inputs for such units discharging through those stacks in million BTU's per hour.

3.1.e. For Type 'b' and Type 'c' fuel burning units, the product of 3.1 and the total design heat inputs for such units discharging through those stacks in million BTU's per hour.

3.2. Maximum Allowable Emission Rates for Similar Units in Region IV (Kanawha Valley Air Quality Control Region: Kanawha County, Putnam County, and Falls and Kanawha Magisterial Districts of Fayette County):
 == No person shall cause, suffer, allow, or permit the discharge of sulfur dioxide into the open air from all stacks located at one plant, measured in terms of pounds per hour, in excess of the amount determined as follows:

3.2.a. For fuel burning units of the John Amos Plant of Appalachian Power Company, located in Air Quality Control Region IV, the product of 1.6 and the total design heat input for such units discharging from those stacks in million BTU's per hour.

3.2.b. For fuel burning units of the Kanawha River Plant of Appalachian Power Company, located in Air Quality Control Region IV, the product of 1.6 and the total design heat inputs for such units discharging through those stacks in million BTU's per hour.

3.2.c. For Type 'b' and Type 'c' fuel burning units, the product of 1.6 and the total design heat inputs for such units discharging through those stacks in million BTU's per hour, provided however, that no more than 5,500 pounds per hour of sulfur dioxide shall be discharged into the open air from all such stacks.

3.3. Maximum Allowable Emission Rates for Similar Units in All Priority III Regions Except Region IV. -- No person shall cause, suffer, allow; or permit the discharge of sulfur dioxide into the open air from all stacks located at one plant, measured in terms of pounds per hour, in excess of the amount determined as follows:

3.3.a. For fuel burning units of the Harrison Power Station of Monongahela Power Company, located in Air Quality Control Region VI, the product of 5.12 and the total actual operating heat inputs for such units discharging from those stacks in million BTU's per hour.

3.3.b. For fuel burning units of the Rivesville Power Station of Monongahela Power Company, located in Air Quality Control Region VI, the product of 3.2 and the total design heat inputs for such units discharging from those stacks in million BTU's per hour.

3.3.c. For fuel burning units of the Albright Power Station of Monongahela Power Company, located in Air Quality Control Region VI, the product of 3.2 and the total design heat inputs for such units discharging from those stacks in million BTU's per hour.

3.3.d. For fuel burning units of the Fort Martin Power Station of Monongahela Power Company, located in Air Quality Control Region VI, the product of 3.1 and the total actual operating

heat inputs for such units discharging from those stacks in million BTU's per hour.

3.3.e. For fuel burning units of the Philip Sporn Plant of Central Operating Company, located in Air Quality Control Region III, the product of 3.2 and the total design heat inputs for such units discharging from those stacks in million BTU's per hour.

3.3.f. For Type 'b' and Type 'c' fuel burning units, the product of 3.2 and the total design heat inputs for such units discharging through those stacks in million BTU's per hour.

3.4. Allowable Emission Rates for Individual Stacks.

3.4.a. Unless otherwise approved by the Director. The maximum allowable emission rate for an individual stack shall not exceed by more than twenty-five percent (25%) the emission rate determined by prorating the total allowable emission rate specified in subsections 3.1., 3.2., or 3.3., on the basis of individual unit heat input at design capacity for all fuel burning units discharging through that stack.

3.4.ba.1. Subject to the provisions of this ~~rule~~ section, allowable emission rates for individual stacks shall be determined by the owner and/or operator and registered with the Director at the request of and on forms provided by the Director. Such rates shall be subject to review and approval by the Director.

3.4.ca.2. The approved set of individual stack allowable emission rates shall become an official part of the compliance schedule and any permits concerning such source or sources, and shall not be changed without the prior written approval of the Director.

3.4.b. The owner or operator of a source subject to subsections 3.1, 3.2 or 3.3 of this rule which has more than one stack, may petition the Director for individual stack allowable emission rates differing from those calculated under

subdivision 3.4.a. The Director may approve such request provided that:

3.4.b.1. For each scenario the sum of the maximum allowable emission rates for each stack shall not exceed the total allowable emission rate specified in subsection 3.1, 3.2 or 3.3 for all stacks located at one plant;

3.4.b.2. The application shall include, but not be limited to, the maximum proposed emission rate for each individual stack for each proposed operating scenario;

3.4.b.3. The owner or operator shall install a certified continuous emissions monitoring system (CEMS) to monitor sulfur dioxide emissions for each stack. Such CEMS shall be installed, certified, operated and maintained as specified in 40 CFR Part 60, Appendix B, Performance Specification 2 (PS2). Sources meeting the requirements of 40 CFR Part 75 (Acid Rain) shall be deemed to have satisfied the requirements of PS2;

3.4.b.4. The owner or operator shall demonstrate to the Director's satisfaction that for each operating scenario approved the source will not cause or contribute to a violation of the National Ambient Air Quality Standard for sulfur dioxide, and demonstrate compliance with any other applicable emissions banking and trading rules;

3.4.b.5. The Director shall not approve a relaxation of a technology-based emission limitation for a specific unit or stack that has been established pursuant to any other rule, permit or consent order nor shall the Director approve a relaxation in emission limits previously established for the purpose of avoiding the permitting requirements of 45CSR14 or 45CSR19; and

3.4.b.6. Any approval of an individual stack allowable emission rate by the Director pursuant to subdivision 3.4.b shall be embodied in a permit issued as an existing stationary source permit in accordance with 45CSR13.

3.5. The design heat input of a waste heat boiler shall not be included in computing the total plant design heat input for the purposes of subsections 3.1, 3.2, 3.3 or 3.4. ~~of this rule.~~

3.6. No person shall circumvent the provisions of this rule by constructing fuel burning unit(s) larger than would be necessary to provide heat and/or power for an existing manufacturing plant, with a reasonable margin for plant expansion, in order to use that design heat input to raise the allowable sulfur content in fuel.

3.7. No person shall cause, suffer, allow, or permit the discharge of sulfur dioxide to the open air from the combustion of fuel in a fuel burning unit of a waste heat boiler in excess of 2.2 pounds of sulfur dioxide per million BTU's of heat input per hour. This limitation is based on the heat input provided to the boiler by the combustion of this auxiliary fuel.

3.7.a. The provision of this subsection applies only to the fuel used for the waste heat boiler(s) and does not replace or supersede the provisions of subsection ~~3-84.1.~~

~~6.1.b.3.8. Tests to determine c~~Compliance with the allowable sulfur dioxide emission limitations from fuel burning units shall be based on a continuous twenty-four (24) hour averaging time. The owner and/or operator of a fuel burning unit shall not allow emissions to exceed the weight emissions standards for sulfur dioxide as set forth in this rule, except during one (1) continuous twenty-four (24) hour period in each calendar month and during this one (1) continuous twenty-four hour period said owner and/or operator shall not allow emissions to exceed such weight emission standards by more than ten percent (10%) without causing a violation of this rule. ~~A standard starting time for all continuous twenty-four (24) hour periods shall be fixed in writing by mutual agreement between the Director and the owner and/or operator of the fuel burning unit. A continuous twenty-four (24) hour period is defined as one (1) calendar day.~~

3-8.45-10-4. Weight Emission Standards for Manufacturing Process Source Operations.

3-8.a.4.1. No person shall cause, suffer, allow; or permit; the emission into the open air from any source operation an in-stack sulfur dioxide concentration exceeding 2,000 parts per million by volume from existing source operations, except as provided in subdivisions 3-8.b.4.1.a through 3-8.f.4.1.e.

3-8.b.4.1.a. No person shall cause, suffer, allow; or permit sulfur dioxide tail gas emissions from sulfuric acid manufacturing plants to exceed the following:

b-1.4.1.a.1. For plants using elemental sulfur as a feed stock, 30 pounds per ton of acid produced.

b-2.4.1.a.2. For plants using other materials as a feed stock, 40 pounds per ton of acid produced.

3-8.c.4.1.b. No person shall cause, suffer, allow; or permit the emission of sulfur oxides, calculated as sulfur dioxide, from a sulfur recovery plant to exceed 0.06 pounds per pound of sulfur processed.

3-8.c.4.1.c. No person shall cause, suffer, allow; or permit the emission of sulfur oxides, calculated as sulfur dioxide, from primary non-ferrous smelters to exceed that determined by the following equations:

Copper Smelters: $Y = 0.2X$

Zinc Smelters: $Y = 0.564X^{0.85}$

Lead Smelters: $Y = 0.98X^{0.77}$

Where, X is the total sulfur fed to the smelter in pounds per hour and Y is the allowable sulfur dioxide emissions in pounds per hour.

3-8.f.4.1.d. No person shall cause, suffer, allow; or permit the total sulfite pulp mill emissions

of sulfur oxides, calculated as sulfur dioxide, from operations such as blow pits, washer vents, storage tanks, digester relief; and recovery system, to exceed nine (9.0) pounds per air-dried ton of pulp produced.

4.1.e. The owner or operator of a manufacturing process source operation(s) which has the potential to emit less than 500 pounds per year of sulfur oxides.

6-1.a.4.2. ~~Tests to determine c~~Compliance with the allowable sulfur dioxide emission concentration limitations from manufacturing process source operation(s) set forth in this rule shall be based on a block two (2) three (3) hour averaging time.

3-8.d.45-10-5. Combustion of Refinery or Process Gas Streams.

3-8.d-1-5.1. No person shall cause, suffer, allow; or permit the combustion of any refinery process gas stream or any other process gas stream that contains hydrogen sulfide in a concentration greater than 50 grains per 100 cubic feet of gas except in the case of a person operating in compliance with an emission control and mitigation plan approved by the Director and U. S. EPA pursuant to subparagraph (2) of this subsection. In certain cases very small units may be considered exempt from this requirement if, in the opinion of the Director, compliance would be economically unreasonable and if the contribution of the unit to the surrounding air quality could be considered negligible.

3-8.d-2-5.2. Any owner or operator of a by-product coke production facility in existence on the effective date of this rule who can demonstrate to the Director that there is no practical alternative to scheduled maintenance (including shutdown) of desulfurization equipment may request the approval of an enforceable, temporary sulfur dioxide emissions control and mitigation plan for such maintenance period. In order for a plan under this paragraph to be approved the plan must meet the following conditions:

~~3-8-d-2-A-5.2.a.~~ Provide that all feasible control measures and process changes will be employed at the coke production facility to reduce emissions of sulfur dioxide (including reduction of coke oven gas generation) during the control system outage.

~~3-8-d-2-B-5.2.b.~~ Provide for a definitive reduction in sulfur dioxide emissions by the establishment of unit-specific allowable emission rates for all emissions units of the stationary source sufficient to prevent any violation of federal and state ambient air quality standards or applicable air quality increments for sulfur dioxide.

~~3-8-d-2-C-5.2.c.~~ Provide that system down-time and excess sulfur dioxide emissions be reduced to the greatest extent possible by use of increased or contract maintenance personnel, maximized maintenance labor shifts, and optimization of available spare parts inventories.

~~3-8-d-2-D-5.2.d.~~ Provide for emissions and compliance monitoring as required by the Director in the approved plan during the maintenance periods and for the submission of reports of such monitoring and tests within time-frames specified by the Director in the approved plan. All approved plans shall require that a certified report of excess sulfur dioxide emissions from the by-product coke production facility and offsetting emission units be submitted to the Director within thirty (30) days after the end of the maintenance period.

~~3-8-d-2-E-5.2.e.~~ Provide that no maintenance period exceed fourteen (14) days in length nor occur more than twice in any calendar year.

~~3-8-d-2-F-5.2.f.~~ Provide at least two weeks notice of all scheduled maintenance periods, the anticipated length of the maintenance period, work to be completed, measures to be taken to minimize the length of desulfurization system down-time and such other information as the Director may specify.

~~3-8-d-2-G-5.2.g.~~ Provide for annual review, if necessary, modification or termination of the plan by the Director.

~~3-8-d-2-H-5.2.h.~~ Provide that the Director may impose limitations on emission units that are more restrictive than those provided for in the plan as necessary to assure attainment of air quality standards for sulfur dioxide in light of data provided pursuant to subparagraph F subdivision 5.2.f. of this subsection, or any other information available to the Director.

5.3. The Director shall, in making a determination concerning plan modification or termination, review the plant's compliance history and records to determine whether the plan has prevented or minimized, to the extent feasible, desulfurization system outages and excess emissions. The initial approval of the plan and any modification of the plan shall be accomplished as a revision to the State Implementation Plan.

5.4. Compliance with the allowable hydrogen sulfide concentration limitations for combustion sources set forth in this rule shall be based on a block three (3) hour averaging time.

§45-10-46. Registration.

46.1. Within thirty (30) days after the effective date of this rule all persons owning and/or operating a source(s) of sulfur dioxide subject to this rule and not previously registered shall have registered such source(s) with the Director. The information required for registration shall be determined and provided in the manner specified by the Director. Registration forms should be requested from the Director by the owner and/or operator of such source(s).

46.2. The owner and/or operator of a source(s) of sulfur dioxide that is under construction or on which construction is initiated within thirty (30) days after the effective date of this rule shall register such source(s) within this thirty (30) day period.

§45-10-57. Permits.

~~57.1. After the effective date of this rule, nNo person shall construct, or modify or relocate any source of sulfur dioxide without first obtaining a permit for such construction or modification. Applications for permits shall be made upon forms available from the Director and shall be filed no less than ninety (90) days prior to the construction or modification. These forms shall include such information as in the judgment of the Director will enable him or her to determine whether such source(s) will be so designated as to operate in conformance with the provisions of this rule and the Code of West Virginia, and will not cause or contribute to the violation of Air Quality Standards. Within ninety (90) days of the receipt of an application the Director shall issue or deny such permit in accordance with the provisions of W. Va. Code §22-5-1 et seq., and 45CSR13 Series 13, 14, 19 and 30 of Title 45.~~

§45-10-68. Reports and Testing: Testing, Monitoring, Record Keeping and Reporting.

8.1. Testing.

~~6-3-8.1.a. At such reasonable times as the Director may designate, the owner or operator of a source(s) of sulfur dioxide any fuel burning unit(s), manufacturing process source(s) or combustion source(s) may be required to conduct or have conducted tests to determine the compliance of such source(s) with the emission limitations of Sections 3, 4 or 5. Such tests shall be conducted in such manner as the Director may specify and be filed on forms and in a manner acceptable to the Director accordance with the appropriate test method set forth in 40 CFR Part 60, Appendix A, Method 6, Method 15 or other equivalent EPA testing method approved by the Director. The Director, or his or her duly authorized representative, may at his or her option witness or conduct such tests. Should the Director exercise his or her option to conduct such tests, the operator will provide all necessary sampling connections and sampling ports to be located in such manner as the Director may require, power for test equipment, and the required safety equipment such as scaffolding, railings, and ladders~~

to comply with generally accepted good safety practices.

~~6-4-8.1.b. The Director, or his duly authorized representative, may conduct such other tests as he or she may deem necessary to evaluate air pollution emissions other than those noted in section 3.~~

~~6.5. The operators of the fuel burning units or persons selling fuel shall submit data on the fuel used or sold for use in such units. Such data shall be reported in the manner the Director may specify. However, reports on such data shall not exceed one (1) per month. Such reports must be filed within fifteen (15) days of the end of the established reporting period and will include, but not necessarily be limited to, information such as the quantity of fuel burned or sold and the sulfur, moisture, volatile matter, and the BTU content.~~

6-2-8.2. Monitoring.

~~6-2-a.8.2.a. At the request of the Director the owner and/or operator of a source shall install such stack gas monitoring devices as the Director deems necessary to determine compliance with the provisions of this rule. The data from such devices shall be readily available at the source location or such other reasonable location that the Director may specify. At the request of the Director, or his or her duly authorized representative, such data shall be made available for inspection or copying. Failure to promptly provide such data shall constitute a violation of this rule.~~

~~6-2-b.8.2.b. Prior to the installation of calibrated stack gas monitoring devices, sulfur dioxide emission rates shall be calculated on an equivalent fuel sulfur content basis.~~

~~8.2.c. The owner or operator of fuel burning unit(s), manufacturing process source(s) or combustion source(s) shall demonstrate compliance with sections 3, 4 and 5 of this rule by testing and/or monitoring in accordance with one or more of the following: 40 CFR Part 60, Appendix A, Method 6, Method 15, continuous emissions monitoring systems (CEMS) or fuel sampling and~~

analysis as set forth in an approved monitoring plan for each emission unit.

8.2.c.1. The installation, operation and maintenance of a continuous monitoring system meeting the requirements of 40 CFR 60, Appendix B, Performance Specification 2 (PS2) or Performance Specification 7 (PS7) shall be deemed to fulfill the requirements of a monitoring plan for a fuel burning unit(s), manufacturing process source(s) or combustion source(s). CEMS meeting the requirements of 40 CFR Part 75 (acid Rain) will be deemed to have satisfied the requirements of PS2.

8.2.c.1.A. The owner or operator of a continuous emissions monitoring system installed pursuant to this rule shall follow the quality assurance requirements as set forth in 40 CFR Part 60, Appendix F.

8.2.c.2. Monitoring plans pursuant to subsection 8.2.c shall be submitted to the Director within six (6) months of the effective date of this rule. Approval or denial of such plans shall be within twelve (12) months of the effective date of this rule.

8.2.c.3. A fuel sampling and analysis program, including a record of fuel consumption, may fulfill the requirements of a monitoring plan for a fuel burning unit(s). The minimum requirements for a fuel sampling and analysis program, including fuel consumption records, shall be established by the Director and set forth in an interpretive rule as authorized pursuant to W.Va. Code §29A-1-2.

8.2.d. Excursions outside the range of the control equipment or operational parameters established in an approved monitoring plan will not necessarily constitute a violation of this rule.

8.3. Recordkeeping and Reporting.

8.3.a. The owner or operator of fuel burning unit(s), manufacturing process source(s) or combustion source(s) subject to sections 3, 4 or 5 rule shall maintain on-site a record of all required

monitoring data as established in a monitoring plan pursuant to subdivision 8.2.c. Such records shall be made available to the Director or his duly authorized representative upon request. Such records shall be retained on-site for a minimum of two years.

8.3.b. The owner or operator shall submit a periodic exception report to the Director, in a manner specified by the Director and set forth in an interpretive rule as authorized pursuant to W.Va. Code §29A-1-2. Such an exception report shall provide details of all excursions outside the range of measured emissions or monitored parameters established in an approved monitoring plan and shall include, but not be limited to, the time of the excursion, the magnitude of the excursion, the duration of the excursion, the cause of the excursion and the corrective action taken.

8.3.c. The owner or operator of a fuel burning unit(s) or a combustion source(s) shall maintain records of the operating schedule and the quantity and quality of fuel consumed in each unit in a manner specified by the Director and set forth in an interpretive rule as authorized pursuant to W.Va. Code §29A-1-2. Such records are to be maintained on-site and made available to the Director or his duly authorized representative upon request.

8.3.c.1. The owner or operator of a fuel burning unit(s) utilizing CEMS to fulfill the requirements of subdivision 8.2.c shall be exempt from the requirements of subdivision 8.3.c.

8.3.d. Where appropriate the owner or operator of a fuel burning unit(s), manufacturing process unit(s) or combustion source(s) may maintain such records in electronic form.

8.3.e. The Director may publish, and from time to time revise, monitoring, testing, recordkeeping and reporting instructions implementing the provisions of this rule in the form of an interpretive rule as authorized pursuant to W.Va. Code §29A-1-2.

~~§45-10-7. Compliance Programs and Schedules:~~

~~7.1. In the event that a source(s) of sulfur dioxide in existence prior to the adoption of this rule does not meet the emission limitations, an acceptable program to fully comply with the rule shall be developed and offered to the Director by the person responsible for the source. This program shall be submitted upon the request of, and within such time as shall be fixed by the Director. Once this program has been approved by the Director, the owner and/or operator of such installation shall not be in violation of this rule so long as the approved or amended program is observed.~~

~~7.2. In the event that an owner or operator of such a source(s) of sulfur dioxide fails to submit a program or an acceptable program and schedule, the Director shall, by order, determine the compliance program and schedule.~~

§47-10-89. Variance.

89.1. Due to unavoidable malfunction of equipment or inadvertent fuel shortages, emissions exceeding those provided for in this rule may be permitted by the Director for periods not to exceed ten (10) days upon specific application to the Director. Such application shall be made within twenty-four (24) hours of the equipment malfunction or fuel shortage. In cases of major equipment failure or extended shortages of conforming fuels, additional time periods may be granted by the Director provided a corrective program has been submitted by the owner or operator and approved by the Director.

§45-10-910. Exemptions and Recommendations.

910.1. ~~Any~~ fuel burning units having a design heat input under ten (10) million BTU's per hour will be exempt from section 3; and sections 6 through section 8. However, failure to attain acceptable air quality in parts of some urban areas may require the mandatory control of these sources at a later date.

910.2. In an effort to avoid the necessity for such mandatory controls the Director strongly recommends that specific fuel quality objectives be

met. In Priority I and Priority II regions and in cities in Priority III regions with a population of more than 10,000 (based on the latest census) the Director recommends that no person use or provide for sale fuel having a sulfur content greater than that listed in the following table (at the end of this rule) Table 45-10B for use in residential and other fuel burning units not otherwise restricted by this rule.

10.3. The owner or operator of a fuel burning unit(s) which combusts natural gas, wood or distillate oil, alone or in combination, shall be exempt from the requirements of section 8. Manufacturing operations in which the process is to partially combust wood during the manufacture of charcoal shall be exempt from the requirements of section 8.

§45-10-10. Severance.

~~The provisions of this rule are severable and if any provision or part thereof shall be held invalid, unconstitutional, or inapplicable to any person or circumstance, such invalidity, unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, sections, or parts of this rule or their application to other persons and circumstances.~~

§45-10-11. Circumvention.

11.1 No owner or operator subject to the provisions of this rule shall build, erect, install, modify or use any article, machine, equipment or process, the use of which purposely conceals an emission which would otherwise constitute a violation of an applicable standard. Such concealment includes, but is not limited to, the use of gaseous diluents to achieve compliance with a standard which is based on the concentration of a pollutant in the gases discharged to the atmosphere.

§45-10-12. Inconsistency Between Rules.

12.1. In the event of any inconsistency between this rule and any other rule of the West Virginia Division of Environmental Protection, such inconsistency shall be resolved by the determination

of the Director and such determination shall be based upon the application of the more stringent provision, term, condition, method or rule.

TABLE 45-10A

Priority Classification	Federal Air Quality Control Region	Included West Virginia Counties
I	Region I, Steubenville-Weirton-Wheeling Interstate Air Quality Control Region (Ohio - West Virginia)	Brooke Hancock Marshall Ohio
	Region VII, Cumberland-Keyser Interstate Air Quality Control Region (West Virginia - Maryland)	Grant (Union District only) Mineral (Elk, New Creek, and Piedmont Districts)
II	Region II, Parkersburg-Marietta Interstate Air Quality Control Region (West Virginia - Ohio)	Jackson Pleasants Tyler Wetzel Wood
III	All other regions	All other counties or districts not listed above

TABLE 45-10B

EFFECTIVE DATE	PERCENT SULFUR CONTENT OF FUELS	
	Coal	Oil
June 30, 1972	3.0	2.0
June 30, 1975	2.0	1.5

June 30, 1978

1.0

0.5

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

In the matter of:

ORIGINAL

PUBLIC HEARING ON PROPOSED LEGISLATIVE RULE

45 CSR 10 "To Prevent and Control Air Pollution
from the Emissions of Sulfur Oxides"

Transcript of proceedings had at a public hearing in the above-styled matter for the West Virginia Division of Environmental Protection, Office of Air Quality at the Conference Room, 1558 Washington Street, East, Charleston, West Virginia, 25305, commencing at 6:28 p.m. on the 19th day of July 1999, pursuant to notice.

P R O C E E D I N G S

1
2 MS. CHANDLER: Good evening. This public hearing
3 will now come to order on this 19th day of July, 1999 at
4 the West Virginia Division of Environmental Protection,
5 Office of Air Quality's Conference Room located at 1558
6 Washington Street, East, Charleston, West Virginia.

7 The purpose of the public hearing is to receive
8 comments on the proposed rules filed in the Secretary of
9 State's Office on June 16, 1999 and noticed in the State
10 Register on June 18, 1999. The proposed legislative rules
11 are 45 CSR 1, 45 CSR 2, 45 CSR 3, 45 CSR 4, 45 CSR 5, 45
12 CSR 6, 45 CSR 7, 45 CSR 10, 45 CSR 12, 45 CSR 16, 45 CSR
13 17, 45 CSR 18, 45 CSR 23, 45 CSR 25, 45 CSR 33 and 45 CSR
14 34. The rules were noticed in a Class I legal
15 advertisement in both The Charleston Daily Mail and The
16 Charleston Gazette, and notice was also sent to various
17 individuals and organizations.

18 This public hearing is being held pursuant to the
19 provisions of 29A of the West Virginia Code and Section
20 110 of the Clean Air Act.

21 My name is Jeanne Chandler of the Public Information
22 Office of the West Virginia Division of Environmental
23 Protection. I will be the moderator for these
24 proceedings.

1 In order to obtain separate transcripts for each of
2 the rules, the hearing procedure this evening will be to
3 introduce each rule individually, allow time for oral
4 comment and close the hearing for that particular rule.
5 Written comments for any rule may be submitted at the end
6 of this public hearing tonight. For those of you wishing
7 to make oral comments, a sign-up sheet was provided and
8 sign up now if you haven't already done so. Please limit
9 your comments to five minutes. The comment period has
10 been extended until July 28th until 5:00 p.m. Written
11 comments may be sent to the attention of Edward L. Kropp,
12 Chief, Office of Air Quality, 1558 Washington Street,
13 East, Charleston, 25311. Comments will not be accepted by
14 e-mail. Your comments will be made a part of the rule-
15 making record.

16 The court reporter is Ms. Paula J. Moore. She's with
17 Q & A Court Reporters, Incorporated. If anyone desires a
18 transcript of this proceeding, please contact Ms. Moore at
19 937-2555.

20 The purpose of this public hearing is to accept
21 comments on 45 CSR 10, "To Prevent and Control Air
22 Pollution from the Emissions of Sulfur Oxides." The
23 purpose of 45 CSR 10 is to establish weight emission
24 standards for sulfur oxides from fuel burning units and

1 manufacturing processes. The rule establishes monitoring,
2 record keeping and reporting requirements and requirements
3 for the registration of alternative emission limits for
4 multiple stacks at a single source.

5 The revisions to 45 CSR 10 contained herein are
6 intended to update definitions, clarify and streamline the
7 monitoring, record keeping and reporting requirements,
8 eliminate unnecessary requirements and incorporate U.S.
9 Environmental Protection Agency recommendations. The
10 revisions also provide greater flexibility for the
11 owner/operator to adjust emission limits for individual
12 stacks. Other revisions are intended to harmonize this
13 rule with other rules of the Office of Air Quality.

14 45 CSR 10 is part of the West Virginia State
15 Implementation Plan approved by the United States
16 Environmental Protection Agency to assure attainment and
17 maintenance of attainment with the National Ambient Air
18 Quality Standards for sulfur oxides. The revisions
19 proposed herein were initiated by the Office of Air
20 Quality as part of a broad effort to modernize and
21 streamline all the Office rules. The current revision
22 process is also intended to update and harmonize this rule
23 with other rules of the Office of Air Quality. The
24 proposed revisions are a result of a thorough review in a

1 stakeholder process that was inclusive of the Office of
2 Air Quality, representatives from the regulated community,
3 concerned citizens and the environmental community.

4 Upon authorization and promulgation of revisions to
5 45 CSR 10, the Office of Air Quality will seek federal
6 approval of the rule change by the U.S. Environmental
7 Protection Agency for inclusion in the State
8 Implementation Plan for the Federal Clean Air Act.

9 The floor is now open for public comment.

10 MR. MALLAN: I'm Tim Mallan, the environmental
11 manager for West Virginia State Office of American
12 Electric Power. We are submitting comments on the few
13 items in Regulation 10 which will be received by mail.

14 I just wanted to commend the staff on the stakeholder
15 process that resulted in the current changes. We
16 participated as did others in the utility industry, other
17 industry and, as you said, environmental and citizen
18 groups over the last six, seven months -- it's hard to
19 remember exactly how long -- in this process. It was a
20 very good process. I think that we would like to, if we
21 can, suggest to the Office that it be a continuing
22 process; that we look at the changes that had been made in
23 these regulations; that we try them and then in a year or
24 two or some appropriate time period in the future, we come

1 back and revisit these. Once again, get people together
2 and try to come up with a set of regulations that protects
3 the environment and does a good job in getting permits and
4 all out in a very streamlined fashion. We think this has
5 been done, and we'd like to personally thank the staff
6 very much for that. Thank you.

7 MS. ChANDLER: Thank you, Mr. Mallan. Additional
8 comments? (No response.) There being nothing further,
9 the public hearing for 45 CSR 10 is concluded.

10 (WHEREUPON, the hearing was
11 concluded at 6:31 p.m.)

WEST VIRGINIA DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF AIR QUALITY

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

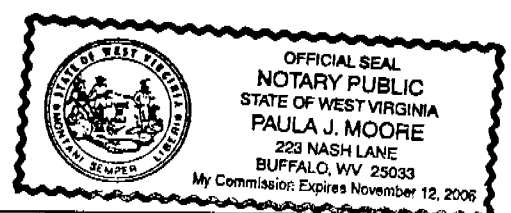
I, the undersigned, Paula J. Moore, a Certified Court Reporter and Notary Public within and for the State of West Virginia, duly commissioned and qualified, do hereby certify that the foregoing is, to the best of my skill and ability, a true and accurate transcript of all the proceedings had in the aforementioned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

Given under my hand and official seal this 27th day of July 1999.

Paula J. Moore

Certified Court Reporter
Notary Public

My commission expires November 12, 2006.



FORM CSR - LASER REPORTERS PAPER & MFG. CO. 800-626-6313

Division of Environmental Protection

6:00 PM

Public Hearing: OAQ Legislative Rules - 2000 Session Time/Date: July 19, 1999

NAME ADDRESS ADDRESS 45CSR 10 COMMENT YES NO

NAME	ADDRESS	ADDRESS 45CSR 10	COMMENT YES NO
1. Sami Grap Lewis - LNW	9408 Venable Ave SE		
2. Tom O'Connell	HC 80 BARBARA KARDON WV		
3. Bill Hauer	AC 65 Box 42-A Lookout WV		
4. Fred Durham	1615 Washington St East		✓
5. Ken Ward	Charleston Gazette 1001 Virginia St, E, City		✓
6. Ron Miller	WV MPO 1624 KANAWHA BLVD. CHARLESTON, WV 25301		
7. LAURA CROWDER	WV DEP C.A.G. 1555 Washington St E (Charleston, WV)		✓
8. EARL DILLINGSLY	"		✓
9. Jesse Atkins	"		✓
10. Robert Keathley	"		✓
11. Karen Watson	" 1615 Washington St. E, Chas 25311		✓
12. JAMES KOTCOV	412 TYRONE-ADEAY ROAD, MORGANTOWN, WV 26505		✓
13. Darrell Bollin	PO Box 68 Washington, WV 26180 GE Plastics		✓
14. Sam Nixon	WV DEP EAD 10 Matjunkin Rd Nitro 25143		
15. John Bennett	WV DEP OAC CHARLESTON		✓

Division of Environmental Protection

6:00 pm

Public Hearing: OAQ Legislative Rules - 2000 Session

Time/Date: July 19, 1999

ADDRESS 45CSR 10 COMMENT YES NO

NAME	ADDRESS	COMMENT YES	COMMENT NO
1. Jim McKeever	Box 144 Cranley, WV 24931		
2. Joseph Robert	Box 66 Chutonsville WV 24931		
3. Rick Wicker	PO Box 190 Clarksburg, WV 26302		X
4. Kathy G. Beckett	PO Box 553, Charleston, WV 25322	X	
5. Tim Mallan	301 Virginia St. E. Charleston, WV 25327	X	
6. Sara F. ...	MS WV 26201		X
7.			
8.			
9.			
10.			
11.			
12.			
13.			
14.			
15.			

Timmy
Kane
Linda
Robert
Earl

4406 Venable Ave SE
Charleston, WV 25304
July 28, 1999

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

Dear Mr. Kropp;

The following comments are in regard to the package of air quality proposed rules. While I represented the League of Women Voters in the stakeholder process, they are not the final or official word of the League, but are my own.

Having read all the proposed rules in one sitting, I am struck first by the amount of discretion given to the Director. I recognize that discretion and judgement are necessary to the effective enforcement of air quality regulations, but in 45CSR 3, section 5.4, the director has discretion to revoke the operating permit of a hot mix asphalt plant that did not maintain the requirements of the rule. Since the requirements are basic--no particulates beyond a certain standard, I believe that the rule should read, "shall revoke, unless good cause is shown by the permittee". Similar language should be used in the equivalent sections throughout this regulatory package. Giving wide latitude to the Director could provide a legal defense to favoritism, should a Director be so inclined.

I am similarly concerned about the lack of deadlines throughout the proposed rules. While it is clearly inappropriate to delineate rigid timelines, it is appropriate to expect that the agency will act expeditiously in its contacts with the regulated community and the public. It would strengthen the rules if such language was placed throughout the rules package where appropriate.

The process used by the Office of Air Quality in revising the rules is excellent. Bringing together the stakeholders to work together, and come to a common understanding, is a process that should be duplicated, not only within the Divisions of Environmental Protection, but throughout state government. I hope that as additional air quality rules are revised that the same process will be used. The rules are indeed improved by this process. I do support the proposed rule revisions and trust that they will be approved by both the Legislature and the EPA.

Thank you for making it possible for me and other citizens to participate in this important project. Inclusiveness made for a better product than earlier rule writing procedures.

Sincerely


Conni Gratop Lewis

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



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

July 1, 1999

Dear Skipp:

On June 28, 1999, we received your Notice of Public Hearing and Public Comment Period as well as copies of the proposed revisions to 16 rules which your office is proposing to adopt, effective the spring of 2000. Of these 16 proposed rules, we have determined that 14 of them may be impacted by current federal requirements. Therefore, we wish to review these proposed rules and provide your agency with any comments we may have for the public record. This allows your agency to make any agreed upon revisions to the proposed rules pursuant to our comments prior to their formal adoption. This would pave the way for expeditious approvals of these revised rules by EPA at the time of formal submittal.

However, given that we would have had only 14 working days until your scheduled date to close the public record, our office will not have time to perform the comprehensive review we normally provide to your agency. Therefore, I am requesting an extension of the date by which comments may be entered into the public record. If you could provide a 30-day extension we would be most appreciative, however, even a 15-day extension would be helpful. EPA would much prefer to identify any concerns we might have to your office while the State regulations are at the proposal stage, and work with you to resolve these concerns before West Virginia formally adopts and submits these regulations for federal approval.

I know you share my belief that our agencies should work together to avoid disapprovals and the uncertainties they pose to the regulated community and the public. Please let us know your decision as soon as possible by having your staff contact Harold Frankford at 215 814-2108.

Sincerely,

A handwritten signature in cursive script, appearing to read "Marcia".

Marcia L. Spink, Associate Director
Office of Air Programs
Air Protection Division



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

		Date: 7/1/99
To	Skip Kropp	
Office	West Virginia DEQ, Office of Air Quality	
Phone Number	304/588-2496	
Fax Number	304/558-3287	
Subject	Request for Extension of Time to Submit Comments	
From	Marcia L Spink EPA PHONE: (215) 814-2104 FAX: (215) 814-2124	
NUMBER OF PAGES INCLUDING COVER SHEET <u>2</u>		
ORIGINAL TO BE SENT: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		
MESSAGE: Request for extension of time to submit comments on West Virginia proposed air quality rules.		

Tammy
Karen -
Laura
Evel
Robert

Karen



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

July 27, 1999

Dear Chief Kropp:

RE: Comments on PM/SO₂ Reg. Revisions

We have reviewed the following three regulations recently proposed for revision by the Office of Air Quality and offer the following comments on behalf of American Electric Power Corp. (AEP). Before addressing specific comments, we want to thank the OAQ for providing the opportunity for us to participate in the stakeholder process used to revise these regulations. The revision of these regulations was simplified under the leadership of the OAQ staff and this process was a well-managed program.

45 CSR 2:

§2.21 AEP suggests that the OAQ reconsider the definition of particulate matter as it appears in the proposed regulation. This definition must be made consistent with the definition found within the NSPS rules that regulate new sources of the type covered by 45CSR2. The proposed language clarifies the fact that 45CSR2 is intended to regulate primary particulates and is not intended to regulate condensable gases. The NSPS regulations for these types of sources (40CFR60 Subparts D, Da, Db, and Dc) use a similar definition and further specify a filter box temperature that prevents the false collection of condensable gases as a particulate (see comment on 45CSR2 Appendix below). The following proposed language should be used in this regulation:

"Particulate matter" means any material, except uncombined water, that exists in a finely divided form as a liquid or solid, as measured by the applicable reference test method for that type of source or an equivalent or alternative method.

§3.2 and 3.3: AEP requests that the OAQ consider the clarification of using measurements from a certified continuous opacity monitoring system to show compliance with the opacity limit. It is obvious that when method 9 is used, that the data will be in the form of a 6-minute average, however it is not so obvious when a continuous monitoring system is used. The rule should specify that 6-minute averages will be used for the demonstration even when using a monitoring system.

45 CSR 2 APPENDIX:

§4.1.a: At a minimum, AEP suggests that the OAQ change the temperature setpoint of the oven specified as 250 °F to a temperature consistent with the NSPS regulations for sources of the type regulated by 45CSR2. 40CFR60 Subparts D, Da, Db, and Dc each specify a temperature setpoint of 320 °F. Furthermore, reference test method 5B (for scrubbed units) specifies a temperature of 320 °F. A temperature of this magnitude is more in line with actual stack temperatures of the non-scrubbed

utility sources and method 5B and ensures that condensable gases are not transformed into liquid and falsely measured as particulate. A temperature of this magnitude becomes more critical when particulates are being measured on sources that burn the higher sulfur coal common in the East. We believe that a more appropriate way to handle the issue of stack testing under 45CSR2 would be to simply reference the appropriate test method and not attempt to rewrite it within the Appendix to 45CSR2.

45 CSR 5

§2.15: As agreed upon during the stakeholder process, the "opacity" definition should be slightly modified. The second part of the opacity definition should be deleted to make it consistent with the definition for opacity in 45CSR2. The following paragraph properly states the needed revision:

"Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background as determined by any chart, recorder, indicator, device or method which is a standardized method for the measurement approved or accepted for use by the Director.

§3.2 and §3.3: Recognizing that the revisions to these two sections were discussed extensively during the stakeholder process, we remain concerned that the stringency of these two requirements is being significantly increased. We understand that the purpose of revising 45CSR5 was to clarify and modernize the regulation but not to increase the stringency. We believe that the new opacity limit listed in these sections should be higher.

We feel a more appropriate opacity limit for §3.2 would be 50% if the OAQ is prepared to slightly increase the stringency of the rule or 55% if the OAQ is satisfied with the current stringency of the rule. We believe that the proper method for determining a 6-minute opacity limit that is equivalent to the previous limit of 5 minutes during a 1-hour period is as follows. Under the old limit, a source could conceivably operate at 60% for a continuous five-minute period before an exceedance occurred. In order to convert to a 6-minute average, one must make the assumption that the source would then be back in compliance with the 20% standard for the final minute of the 6-minute period. The resulting average opacity reading would then be 53% calculated as follows: $[(5*60)+(1*20)]/6$. The equivalent standard for §3.3 could be similarly calculated as 46%. Therefore, with respect to §3.3, we propose a 50% limit if the OAQ is not interested in increasing the stringency of the rule and 45% if the OAQ is prepared to slightly increase the stringency of the rule.

§9.2: We believe that the reference in this section is incorrect and that §9.2 should reference subsection 4.1.b, not §4.2 as noted.

45 CSR 10:

§3.1.a: The applicable emission limit in this section should be modified. Recent modeling completed as part of the Marshall County sulfur dioxide SIP revision process has determined that the proper SO₂ weight emission standard for the fuel burning units of the Kammer Plant should be the product of 2.7 and the total design heat inputs for such units. The paragraph below shows the proposed revision to this section:

For fuel burning units of the Kammer Plant of Ohio Power Company, located in Air Quality Control Region I, the product of ~~6-8~~ 2.7 and the total design heat inputs for such units discharging through those stacks in million British Thermal Units (BTU's) per hour.

§3.8: AEP understands that the OAQ has no intentions of requiring 24-hour stack tests, however as discussed during the stakeholder process, we believe that the opening sentence in this section could be interpreted to require 24-hour stack tests. AEP requests the OAQ reconsider our previous comment and modify the first sentence of this section. The first three words of the sentence should be deleted,

July 27, 1999

Page 3

and the sentence should read as follows: "Compliance with the allowable sulfur dioxide emission limitations..." It seems that the purpose of this sentence is to state the averaging time on which the emission rates are based and is therefore an integral part of the emissions standard and not a testing condition. Reference to compliance tests in this section could be misinterpreted to require a 24 hour long compliance test. There should be no concern that the OAQ's authority to require compliance testing is being circumvented by making the proposed change, as §8.1.a specifically provides the OAQ with ability to require compliance tests.

§8.2.a: AEP recognizes that the issues of testing/demonstrating compliance and monitoring for compliance were discussed extensively during the stakeholder process, however we believe it is imperative that this issue be properly clarified within the rule. This paragraph should make it clear that monitoring is not intended to demonstrate compliance. Compliance is demonstrated by periodically conducting a reference method test. The first sentence of this paragraph should be modified as follows: "...shall install such stack gas monitoring devices as the Director deems necessary to ~~determine~~ monitor compliance with the provisions of this rule" in order to properly reflect the role of a continuous emission monitoring device.

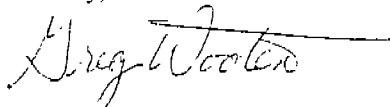
§8.2.c: Similar to our comment on §8.2.a we request that this paragraph be clarified to show that monitoring is not intended as a demonstration test for compliance. The first sentence of this paragraph should be modified as follows: "...manufacturing process source(s) or combustion source(s) shall ~~demonstrate~~ monitor compliance with sections..."

§8.2.c.1.A: As agreed upon during the stakeholder process, a statement should be include in this section confirming that sources meeting the requirements of 40 CFR 75 (Acid Rain) Appendix B will be deemed to have fulfilled the requirements for a the quality assurance requirements.

§8.2.c.2: The subsection referenced in this section appears to be incorrect. We believe the proper reference should be §8.2.c., not §8.5 as noted.

Again, thank you for the opportunity to participate in the stakeholder process that was used to formulate many of the revisions that have been proposed in these regulations and for the opportunity to comment on the proposed regulations. If you have any questions concerning any of the comments that have been made, please contact me at (614) 223-1262 or at the above address.

Sincerely,



Greg Wooten
Air Quality Section
Environmental Services Division

xc: T. J. Carroll - WVDEP Office of Air Quality
D. W. Kemp - Legal
M. R. Robida/J. C. Lytle/F. E. Blake/J. P. Novotny - Environmental Services
T. P. Mallan - Charleston
K. Beckett - Jackson & Kelly
D. M. Flannery - Jackson & Kelly

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Kimmy
Karen
Laura
Earl
Rupe
Cathy
Bill M

Karen
Wetson

JACKSON & KELLY PLLC

ATTORNEYS AT LAW

1600 LAIDLEY TOWER
P. O. BOX 553

CHARLESTON, WEST VIRGINIA 25322

TELEPHONE 304-340-1000 TELECOPIER 304-340-1130

<http://www.jacksonkelly.com>

(304) 340-1019
kbeckett@jacksonkelly.com

July 27, 1999

300 FOXCROFT AVENUE
MARTINSBURG, WEST VIRGINIA 25401
TELEPHONE 304-263-8800

256 RUSSELL AVENUE
NEW MARTINSVILLE WEST VIRGINIA 26155
TELEPHONE 304-455-1751

6000 HAMPTON CENTER
MORGANTOWN, WEST VIRGINIA 26505
TELEPHONE 304-599-3000

412 MARKET STREET
PARKERSBURG WEST VIRGINIA 26101
TELEPHONE 304-424-3490

1000 TECHNOLOGY DRIVE
FAIRMONT, WEST VIRGINIA 26554
TELEPHONE 304-368-2000

1144 MARKET STREET
WHEELING WEST VIRGINIA 26003
TELEPHONE 304-233-4000

1660 LINCOLN STREET
DENVER COLORADO 80264
TELEPHONE 303-330-0003

175 EAST MAIN STREET
LEXINGTON KENTUCKY 40595
TELEPHONE 606-255-9500

2401 PENNSYLVANIA AVENUE N W
WASHINGTON, D C 20037
TELEPHONE 202-973-0200

MEMBER OF LEX MUNDI
THE WORLD'S LEADING ASSOCIATION
OF INDEPENDENT LAW FIRMS

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

Re: Proposed Modifications to 45 CSR
1,2,3,4,5,6,7,10,16, 17, 18, 23, 25, 33, and
34.

Dear Chief Kropp:

The West Virginia Chamber of Commerce ("Chamber") was a faithful participant in the Office of Air Quality ("OAQ") convened Stakeholder Regulatory Review Workgroup. From those meetings came a number of recommendations and suggestions that were presented to the OAQ for consideration in proposing revision to the West Virginia air quality regulatory program. The Chamber extends its compliments to the OAQ staff for the long hours it committed to this effort. The Chamber is supportive of the review process as a forum available to everyone to listen, learn, and draft proposed state air policy. The open exchange of concerns, ideas, and recommendations has resulted in a proposal package the genesis of which the participants can clearly understand. In some instances compromise was required. The Chamber supports this package of regulatory revisions in the spirit of compromise. These recommended proposals, as a whole, are appropriate and result in improvement in the state air quality program.

The following detailed comments are provided on behalf of the West Virginia Chamber of Commerce.

45 CSR 2 - Particulate Emissions from Boilers

Section 3 Visible Emission Standards - The Chamber had urged consideration of modifications to the criteria for allowing an alternative visible emission standard. The Chamber supports the inclusion of the modifications to the regulation to make it more consistent with the six minute averaging of the rule and to meet the needs of the regulated community, without compromising the ultimate ambient air quality for particulates.

Section 8 Testing, Monitoring, Recordkeeping and Reporting - The OAQ presented to the Stakeholder Review Workgroup a number of modifications it proposed concerning testing, monitoring, recordkeeping and reporting. The Chamber has supported those modifications, where appropriate. The Chamber has strongly urged the agency to recognize that demonstration of compliance can be affected through a number of tools, to include sampling and monitoring. It is the Chamber's expectation that the OAQ will continue to recognize the varied options available concerning testing and monitoring. The Chamber has supported enhanced recordkeeping and reporting to the extent that the OAQ was willing to work with the regulated sources to develop a useful regulatory tool that would not be unnecessarily burdensome and expensive. Based upon the representations of the OAQ that its intent was to enhance the recordkeeping and reporting to assure the effectiveness of Regulation 2, the Chamber supports the regulatory revisions.

Section 8.4 addresses the potential need for the development of alternatives to the testing, monitoring and reporting requirements of the rule. The Chamber is supportive of the inclusion of this concept. The OAQ proposes to recognize unique operational characteristics that either make the implementation of Regulation 2, Section 8 impossible or unreasonable. This modification is evidence of the OAQ's commitment to work toward the development of a program that works with the regulated community to assure an effective air quality regulatory requirement. The Chamber applauds these and other similar efforts.

During the Stakeholder Review process it was determined that the development of an interpretive rule would be appropriate to complement the modifications to Section 8. The Chamber stands ready to participate in the development of that rule.

45 CSR 3 - Hot Mix Asphalt

Regulation 3 had not undergone review since 1979. Many of the modifications to this regulation have been proposed to update and streamline the rule. The Chamber is supportive of the proposed changes.

Section 3.2 Start-up and Shut-down of Operations - During the Stakeholder Review Process, the Chamber had urged regulatory recognition of shut-down conditions, as has been done under the remainder of the OAQ regulatory program. The OAQ has proposed inclusion thereof. Again, the Chamber applauds the efforts of the OAQ to streamline the regulations and create consistency where possible.

45 CSR 4 - Objectionable Odors

Regulation 4 is being proposed for significant modification in response to the OAQ's recommendations. The Stakeholder Review Process engaged in lengthy discussions over the concerns of the agency and the problems they wished to see addressed. The Chamber participated in those discussions and is supportive of this ultimate proposal. This rule is new and we will all learn more about its impact on the air quality program as the agency begins to administer it. This proposal is a good first attempt.

Section 2.5 Objectionable Odors - This proposed definition underwent a great deal of discussion during the Stakeholder Review Process. The Chamber is supportive of this definition based upon the representation by the agency that this odor regulation would be implemented based upon a combination of factors (investigations, determinations, and complaints). Recognition of the need for a combination of factors gives the definition of "objectionable odors" the depth it needs to avoid abuse by reported complaints that may or may not be inspired by an environmental condition. The Chamber is supportive of a well designed regulatory program that assures the environmental regulations will not be subject to abuse by parties who may wish to use it to advance alternative political objectives.

Section 4.1 Accidental and Other Infrequent Emissions, Reporting - The Chamber had advanced a concern about the need to create an affirmative obligation for the reporting of accidental or other infrequent emissions that was reasonable. The OAQ's proposal both creates the obligation and clarifies that such a report is due upon the reasonable determination by a person that they are responsible for the objectionable odor. The Chamber is supportive of this language and believes its reasonableness standard complements other more stringent reporting obligations that are truly environmentally-based. The Chamber notes a typographical error where the last line of this regulation should read: "reasonably has knowledge of such discharge."

Section 7 Enforcement - This language is written such that it fails to recognize the notification and investigation process described in Section 3 of this rule. The Chamber is supportive of the need for the OAQ to preserve its authority to exercise its enforcement authorities when the emission of air pollution is causing a violation of the WV Air Pollution Control Act. The Stakeholder Review Process invested significant resources in developing this rule. The Chamber presumes the OAQ intended for this language in Section 7 as a reservation of enforcement authority that would be invoked after reasonable efforts to implement Section 3 had failed.

45 CSR 5 - Coal Preparation Plants, Coal Handling, and Coal Refuse

This regulation has been expanded to incorporate the current 45 CSR 1 which regulates coal refuse. In the interest of consolidating the air quality regulations that impact the coal industry, it was proposed that its requirements be combined with 45 CSR 5. The Chamber participated in the efforts to combine these regulations and complements the OAQ's efforts to affect this combination as seamlessly as possible. This modification is consistent with the intent and purpose of the Stakeholder Review Process which was to revise and update.

Sections 3.2 and 3.3 Particulate Emission Limits - The OAQ has proposed revision to the opacity limits by offering the statement, during the Stakeholder Review Process, that these revisions were based upon the need to address the calculation of averaging, as opposed to aggregation. The regulatory impact of these changes was not readily apparent to any of the participants in the Review Process, to include the OAQ. It is the understanding of the Chamber that these revisions were not intended to be submitted, since the Stakeholder participants were so unclear as to the impact of the proposed change. The Chamber urges that the regulation be restored to its original language.

Section 10 Reports and Testing - The Chamber supports the proposed modifications to this section to emphasize the EPA test methods used by most operations. The proposal merely updates and refines the regulation without changing its effect.

Section 11 Variance - The proposed modifications to the administrative process of granting a variance were discussed at length during the Stakeholder Review Process. The intent of the modifications was to provide a well defined process for managing equipment failure. The Chamber supports the OAQ's inclusion of these revisions. The suggested modifications will serve to enhance the smooth administration of the variance process that currently exists. Administrative efficiency is an important factor and the Chamber applauds the agency's efforts to incorporate such changes.

45 CSR 6 - Combustion of Refuse

Section 3.1.c.4 Pre-Approval of Burning - The proposed revisions to Regulation 6 are principally those revisions recommended by the OAQ during the Stakeholder Review Process. Generally, these modifications have been designed to update this regulation. The Chamber is supportive of the proposed changes and further recommends that the agency consider the development of an interpretive rule, or other appropriate administrative tool for implementation, that will provide guidance to the regulated community concerning the new requirement that approval to conduct burning of land clearing debris must be obtained. Consistent with the stated goals of this regulatory review process, clear communication as to what the agency expects of the regulated community will go far to assure smooth implementation of the modified provisions of Section 3.1.c.4.

45 CSR 7 - Particulate Emissions from Manufacturing Processes

The Stakeholder Review Process devoted significant time to exploring the particulate emissions control program as set forth under Regulation 7. This is a complex rule that attempts to regulate a very diverse universe of manufacturing processes. This fact alone seriously complicates any effort to streamline and clarify its intent. The Chamber extends its compliments to the OAQ staff for its efforts during the Stakeholder discussions to explain the agency's needs with regard to this rule. The Chamber recommends for consideration the future need to review the merit of splitting Regulation 7 into several small regulations that are industry category specific. Such a split would significantly simplify the implementation and compliance with this rule.

Section 2.18 Maintenance Operations - The Chamber had proposed consideration by the Stakeholder Workgroup the need to recognize that certain maintenance operations result in emissions of particles that are not clearly defined under Regulation 7. This lack of clarity had resulted in inconsistent interpretation and enforcement. In response to that request, the OAQ has proposed a definition and a well defined exemption for certain maintenance operations that are not adversely impacting air quality under Section 10.3. The Chamber is supportive of these revisions as resulting in clarification of the regulation. These revisions recognize the fact that certain maintenance operations are insignificant and infrequent sources of particles not warranting extensive regulation, but instead warranting management through good engineering practices.

Section 2.39.d Type 'd' Manufacturing Processes - The Chamber had raise concerns over the need to clarify the scope of those manufacturing processes in which material of any origin undergoes a chemical change. In response to those comments, the OAQ has proposed the phrase "and this chemical change results in the emission of particulate matter to the atmosphere." The Chamber supports this change as one that serves to enhance the implementation of and compliance with this rule.

Section 3.7 Emissions from Storage Structures - The revisions to this section were intended by the Stakeholder Workgroup to be clarifying modifications to the requirement to control emissions from storage structures. The Chamber supports this revision as one that serves to streamline the requirement to control emissions from storage structures.

Section 5 - Control of Fugitive Particulate Matter - It was proposed by the Chamber that it would be appropriate to add language to expand the meaning of a fugitive particulate control system to include process equipment design, control equipment design or operation and maintenance procedures. These are important and effective alternatives that warranted recognition in the regulatory program. The OAQ has proposed inclusion of these alternatives confirming these fugitive control measures. The Chamber supports these modifications as enhancements to the meaning of the rule.

Section 10 - Alternative Visible Emission Standards - The Stakeholder Workgroup engaged in extensive discussions over the need to provide a similar process for demonstrating the need for an alternative visible emission standard for start-up and shutdowns as exists for sources of particles that are regulated from boilers. The results of those discussions are found in the proposed new section 10.4. The Chamber supports these recommended changes that create a process by which a manufacturing source operation is afforded the opportunity of demonstrating the need for an alternative standard that is protective of air quality.

Sections 10.5 and 10.6 Deminimus Sources of Particles - During the Stakeholder Review, the Chamber had urged the agency to recognize those manufacturing operations that emit deminimus amounts of particles and mineral acids. Inclusion of these new sections is a positive addition to the program. The Chamber is strongly supports an effective regulatory program that targets those sources that have a reasonable potential of adversely impacting air quality and that excludes those sources that do not.

Section 11 - Alternative Emission Limits for Duplicate Source Operations - The OAQ has proposed a section to address duplicate source operations that elect to petition for an alternative emission limit in response comments raised in the Stakeholder Review Process. It was recognized by the Stakeholder Review Workgroup that the issues surrounding the state "duplicate source" rule are very complex. The Chamber supports inclusion of this section that serves to create a review process for alternative emission limits for duplicate source operations. This provides an alternative to litigation which enhances regulatory efficiency.

The Chamber advocated for the removal of the "duplicate source" provisions as an archaic regulatory tool that has long since been rendered obsolete by the Clean Air Act Amendments and specifically by the NSR program. It is recommended that future modifications to Regulation 7 should focus on the need to eliminate these requirements.

45 CSR 10 - Sulfur Oxides

Section 3.4.b. Individual Allowable Stack Emission Rates - The Chamber supports the OAQ's inclusion of provisions that would allow the agency to address those facilities with individual stack allowable emission rates differing from those calculated under the rule, based upon compliance with the criteria set forth in 3.4.b.1 through 3.4.b.6. This rule revision is evidence of the agency's interest in working with the regulated community to assure an implementable program that results in protection of air quality.

Section 4.1.e Deminimus Operations - During the Stakeholder Review, the Chamber had urged the agency to recognize those manufacturing operations that emit deminimus amounts of sulfur oxides. Inclusion of this new section is a positive addition to the program. The Chamber is strongly supports an effective regulatory program that targets those sources that have a reasonable potential of adversely impacting air quality and that excludes those sources that do not.

Section 8 Testing, Monitoring, Recordkeeping and Reporting - The OAQ presented to the Stakeholder Review Workgroup a number of modifications it proposed concerning testing, monitoring, recordkeeping and reporting. The Chamber has supported those modifications, where appropriate. The Chamber has strongly urged the agency to recognize that demonstration of compliance can be affected through a number of tools to include sampling and monitoring. It is the Chamber's expectation that the OAQ will continue to recognize the varied options available concerning testing and monitoring. The Chamber has supported enhanced recordkeeping and reporting to the extent that the OAQ was willing to work with the regulated sources to develop a useful regulatory tool that would not be unnecessarily burdensome and expensive. Based upon the representations of the OAQ that its intent was to enhance the recordkeeping and reporting to assure the effectiveness of Regulation 10, the Chamber supports the regulatory revisions.

During the Stakeholder Review process it was determined that the development of an interpretive rule would be appropriate to complement the modifications to Section 8. The Chamber stands ready to participate in the development of that rule.

Section 10.3 Exemptions - The Chamber supports the proposed exemption from the testing, monitoring, recordkeeping and reporting requirements for those operations that are known not to emit levels of sulfur oxides to warrant such requirements. These proposed modifications are clearly intended to streamline the regulation and provide for an appropriate level of regulation commensurate with the environmental impact.

45 CSR 17 - Fugitive Particulate Matter

The proposed revisions to Regulation 17 were presented to the Stakeholder Review Workgroup by the OAQ. The OAQ expressed the need to have a regulatory tool that could be used to require management of fugitive emissions from sources that were not otherwise subject to the OAQ regulatory program. In recognition of that expressed need, it was agreed by the Stakeholder Workgroup that Regulation 17 should be significantly expanded. The

Chamber is supportive of these proposed changes that create a process by which sources would be contacted by the agency and efforts expended to develop a reasonable emissions control or suppression program.

45 CSR 18 - Meat Firing

The Stakeholder Workgoup discussed the history of the promulgation of the meat-firing regulation and concluded that this regulation was no longer warranted, based upon the fact that its provisions had not recently been invoked, implemented, or useful in an manner to the public, the agency or the potential regulated community. The Chamber supports the elimination of this regulation as clearly within the scope of updating the OAQ program.

Additional modifications have been proposed by the Office of Air Quality for the following regulations to make necessary and appropriate cross-references to the federal program. The Chamber is supportive of these modifications.

45 CSR 16 - New Source Performance Standards

45 CSR 23 - Municipal Solid Waste Landfills


45 CSR 25 - Hazardous Waste Treatment, Storage, or Disposal Facilities

45 CSR 33 - Acid Rain

45 CSR 34 - Hazardous Air Pollutants

In conclusion, the Chamber provided an oral statement at the hearing of July 19, 1999. In that statement the Chamber urged that a thorough Response to Comments be provided by the OAQ concerning the proposed rulemaking package that will explain the intent of the modifications as was agreed during the Stakeholder Review Process. This will serve to memorialize the changes that will be made to the regulations and provide guidance concerning the implementation of these changes.

Respectfully, submitted this 27th of July, 1999.



Kathy G. Beckett
Counsel to the West Virginia Chamber
of Commerce
Jackson & Kelly, PLLC
Post Office Box 553
Charleston, West Virginia 25311
(304) 340-1019
(304) 340-1130 facsimile

*Tammy
Karen
Laura*

Karen Watson

Thompson Coburn LLP
Attorneys at Law
One Mercantile Center
St. Louis, Missouri 63101-1693
314-552-6000
FAX 314-552-7000

.com

www.thompsoncoburn

July 27, 1999

Richard P. Jacobs
314-552-6161
FAX 314-552-7161

VIA FACSIMILE & FEDERAL EXPRESS

Edward L. Cropp
Chief, Office of Air Quality
W.V. Division of Environmental Protection
1558 Washington Street, East
Charleston, WV 25311-2599

Re: Public Comment to Revision of 45 CSR 10

Dear Mr. Cropp:

Enclosed please find Columbian Chemicals Company's public comments regarding the Office of Air Quality's proposed revisions to 45 CSR 10. Another copy has been sent by overnight mail for Wednesday delivery. Please consider these comments in evaluating the proposed revisions.

If you have any questions or comments, please feel free to contact Rodney Canada of Columbian Chemicals, whom I am aware that you have met, or contact me.

Very truly yours,

Thompson Coburn LLP

Richard P. Jacobs

By
Richard P. Jacobs

rpj/rpj

Enclosure

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I. Introduction

Columbian Chemicals Company owns and operates a carbon black manufacturing facility in Moundsville, West Virginia, which facility emits sulfur oxides. One of the rules regulating air emissions currently being revised by the State of West Virginia Office of Air Quality (OAQ), Series 10 (45 CSR 10), is designed to control emissions of sulfur oxides. Thus, Columbian is a stakeholder in the State's process for revising its air regulations. As such, Columbian submits the following comments and proposal for changing the OAQ, Series 10 air regulations.

Columbian has communicated with OAQ personnel on multiple occasions over an extended period, and continues to do so regarding revisions and/or interpretations of the Series 10 regulations, and regarding the propriety of developing a MACT exception to those regulations. During this process, in April, 1999, Columbian submitted information and a proposal to OAQ to revise Series 10 that was substantially similar to this public "Comment." However, this Comment does provide additional information and bases to support Columbian's positions, and Columbian also provides herein specific suggestions regarding subsections of the State's proposed revisions to Series 10 that Columbian has not previously discussed with the State.

In brief, Columbian proposes OAQ change its Series 10 regulations as they apply to carbon black manufacturing facilities, to insure that the upcoming Federal Maximum Achievable Control Technology (MACT) standard applicable to these facilities is not inconsistent with the Series 10 regulations, as well as to insure that the most appropriate controls are implemented to protect ambient air quality. In addition, Columbian believes that Sections 8.2 and 8.3 of the revised Series 10 are ambiguous.

Columbian believes that the Federal MACT standards, when promulgated, will provide an equal or greater level of control and protection with respect to sulfur compound emissions than the enacted, as well as the currently proposed, Series 10 regulations.¹ This heightened level of control will be achieved primarily through implementation of a Best Available Control Technology (BACT) assessment under the Prevention of Significant Deterioration (PSD) permitting process that will be required of carbon black plants in order to achieve the emission reduction levels specified in the MACT standards.

In order to avoid any inconsistencies, and to implement the MACT/BACT approach for regulating sulfur emissions at carbon black facilities, Columbian proposes that language be added to the State's Series 10 regulations to establish that compliance with the requirements of the Federal MACT for carbon black manufacturing will be deemed as compliance with certain sections of Series 10 as the regulations relate to sulfur

¹ Columbian was provided a copy of OAQ's "final" draft revision of its Series 10 regulations e-mailed by Jesse Adkins on June 28, 1999; however, a subsequent "final" draft was e-mailed by Karen Watson of OAQ on July 15, 1999, which version differed slightly from the one sent by Mr. Adkins. Columbian's comments and proposal herein builds on the draft revision sent by Ms. Watson. However, Columbian reserves the right to comment further, at some later date, if the versions sent by OAQ were not accurate or differed in any way from the version intended to serve as the basis for public comment.

emissions currently controlled by both authorities. Appendix A of this document contains proposed alternatives for wording changes to Series 10 regulations for consideration by the State which will accomplish this goal.

II. Development of Carbon Black MACT – Background

The Clean Air Act Amendments of 1990 (CAAA) require the United States EPA to regulate categories of major sources that emit hazardous air pollutants (HAPs). (Major sources are defined as sources capable of emitting 10 tons/year of any single HAP, or 25 tons/year of total HAPs. Section 112(b) of the CAAA lists 188 HAPs for regulation at major sources.) This is being accomplished through the federal MACT program.

The EPA began MACT development by identifying categories of industries and developing schedules for promulgating standards for each category. Carbon black manufacturing was established as a specific category, and a year 2000 deadline was established for promulgation of the MACT standard.

The two primary HAPs emitted from carbon black facilities are carbon disulfide (CS₂) and carbonyl sulfide (COS). Carbon black facilities, including Columbian's facility, generally emit quantities of each of these substances above the 10 tons/year threshold and, therefore, will be subject to the MACT standard.

As the owner and operator of four of the twenty-four carbon black facilities in the U.S., including the Moundsville facility, Columbian has been intimately involved in the MACT development process for the industry. In general, this process requires a detailed evaluation of all facilities in a source category to determine the best controls in existence for all HAPs emitted at major source levels. The best five performing plants in a category with 30 or fewer sources, such as with carbon black category, set the "MACT floor" -- the minimum acceptable level of control for HAPs. The MACT process then leads to the promulgation of regulations that require all sources in that category to achieve at least the MACT floor level of emissions within three years.

In the case of the carbon black industry, the MACT floor level of emissions will have to be met in the year 2003, provided that the EPA meets its regulatory deadlines for issuing the standards. The EPA has been actively working on the MACT standard for the carbon black industry and appears to be on track to meet its regulatory deadlines. Through its individual members and its trade association, the carbon black industry has actively cooperated with the EPA in providing information and input into the MACT standard. As part of this effort, the EPA visited Columbian's facility in Louisiana, and Columbian provided detailed information about its operations to the EPA and has actively participated at MACT development meetings.

As a result of the development process, the EPA issued a draft Presumptive MACT (P-MACT) document for the carbon black industry in November 1998. The P-MACT represents the EPA's preliminary findings and contains a review of emissions and a guidance report of the industry and the existing controls. The P-MACT proposes a MACT floor and control options.²

² A copy of the P-MACT will be provided upon request.

III. Carbon Black Manufacturing Process, Reduced Sulfur Compounds and the Presumptive MACT Standard

The carbon black manufacturing process involves the injection of a hydrocarbon feedstock oil into a high temperature; reduced oxygen furnace. The purpose of this is to "crack" the feedstock oil into its component parts. A pure carbon particle (carbon black) is the desired result of this process. The process also yields byproduct "tail gases" which contain numerous compounds identified as pollutants by various federal and state regulations. These compounds include carbon monoxide (CO), acetylene (C₂H₂), nitrogen oxides (NO_x), and the reduced sulfur compounds of hydrogen sulfide (H₂S) and the two previously mentioned HAPs, carbon disulfide and carbonyl sulfide (CS₂ and COS). Small amounts of other pollutants may also be present. It is the two reduced sulfur, HAP byproduct tail gases which have been the primary focus of the federal MACT development process for the carbon black industry.

The carbon black tail gases have long been recognized by the carbon black industry as being both a source of energy and pollution. The tail gases contain useful heat content, such that it is common in the carbon black industry for all or some of these gases to be used to supply a portion of the energy needs of the plant. Typically, 20% - 30% of the tail gases generated in a carbon black plant are combusted to generate heat needed to dry the carbon black product. Columbian uses about 25% - 30% of its gases for drying product at its Moundsville facility. In addition, some carbon black plants use a portion of their tail gas as fuel for boilers to generate steam required by the process. Columbian currently does not do this at its Moundsville facility. Certain facilities also combust the remaining tail gases using flares or other combustion devices in order to reduce or eliminate the reduced sulfur tail gas pollutants. Because the industry has not been able to separate the HAP components of the tail gases for separate treatment and control, the P-MACT has focused on combustion of the remaining tail gases with the resultant control of all the reduced sulfur and other pollutant compounds.

The EPA determined that the average emissions limits achieved by the best five performing carbon black plants, the required assessment to determine the MACT floor where there are fewer than 30 facilities, involved the combustion of all tail gases. In addition, the P-MACT concludes that the MACT floor for combustion must have a destruction rate efficiency (DRE) of 98% or greater. Because the best performing plants combust all tail gases, and because no technologies or processes have been found that can attain the MACT floor DRE for the sulfur compounds other than combustion, the MACT standard will require carbon black facilities to combust all tail gases.³

Due to the similarity in combustion chemistry, using a flare or other combustion technology on tail gases will result in a 98% or greater destruction of H₂S just as it will for COS and CS₂. Moreover, destruction of the H₂S is, not surprisingly, a requirement in at least one other state. Although H₂S is not listed as a CAAA Section 112(b) HAP,

³ See report "Feasibility of Applying Sulfur Removal Technologies to Treat Off-Gas Streams from the Carbon Black Manufacturing Process", prepared by Radian International in January 1999. This report was submitted to Tim Carroll, OAQ, on February 16, 1999. Another copy will be made available upon request.

it is considered a HAP in Louisiana.⁴ (As you may know, hydrogen sulfide was also originally listed as a HAP for Section 112(b) purposes, but was deleted after a strong lobbying effort by the petroleum industry.) Further, the OAQ and other state agencies have historically been concerned with H₂S emissions because of its characteristic odor which tends to generate complaints from the public. Thus, its destruction under the MACT or parallel state program is both a desired and/or required outcome and will, in fact, be achieved at all carbon black facilities in every state given the MACT combustion requirement for the industry.⁵

As noted, Columbian combusts about a third of its tail gases at the Moundville facility. Columbian is currently making plans to combust all the gases, to meet the carbon black MACT standard in the year 2003, and has been working with OAQ on addressing associated regulatory compliance issues.

IV. Carbon Black MACT and West Virginia Regulations

The combustion of tail gases from carbon black plants, while substantially reducing emissions of the reduced sulfur compounds as well as carbon monoxide (CO) and acetylene (C₂H₂), will also significantly increase emissions of sulfur dioxide (SO₂) and nitrogen oxides (NO_x). Consequently, implementation of the Federal MACT standard will require States to conduct comprehensive reviews for control of emissions from carbon black facilities through the PSD permitting process. The MACT standard can not be implemented at a carbon black facility without the issuance of a PSD permit.

For West Virginia, the review process will involve assessment of specific regulations contained in Series 10. The stated purposes of Series 10 are to:

1. ... prevent and control air pollution from the emissions of sulfur oxides. 45 CSR 10-1(1.1.a); and
2. ... [insure] that all persons engaged in the burning of fuel make a maximum effort to utilize the best quality fuel available regardless of the requirements of this rule. 45 CSR 10-1(1.1.b).

In addition, it is understood that another purpose of these and all air regulations is to protect air quality standards, and in particular, to maintain compliance with National Ambient Air Quality Standards (NAAQS).

⁴ Columbian did not research other states, but believes H₂S is considered a HAP in additional states. Listing of H₂S as a HAP in Louisiana is also significant because five carbon black facilities are located there.

⁵ Other industrial categories subject to a MACT may also present similar emission profiles, emitting a HAP and H₂S. See Attachment B. Columbian has not confirmed that the industries listed in Attachment B also emit H₂S, although this seems likely given the chemistry of reduced sulfur compounds. Additional research would have to be done to determine if implementation of other industry MACTs would also result in similar levels of control for H₂S and the HAP compounds.

Furthermore, the following provisions of Series 10 have specific applicability to the emissions from Columbian's carbon black facility in Moundville:⁶

1. No person shall cause, suffer, allow, or permit, the emission into the open air from any source operation an in-stack sulfur dioxide concentration exceeding 2,000 ppm by volume from existing source operations ... 45 CSR 10-3(3.8.a); proposed revision 45 CSR 10-4(4.1)(hereinafter, the "2,000 ppm standard"); and

2. No person shall cause, suffer, allow or permit combustion of ... any other process gas stream that contains hydrogen sulfide in a concentration greater than 50 grains per 100 cubic feet of gas ... 45 CSR 10-3(3.8.d.1); proposed revision 45 CSR 10-5(5.1)(hereinafter, the 50 grains standard).

V. Benefits from Implementation of Carbon Black MACT in Context of Series 10 Regulations

Columbian believes that, in contrast to the current and proposed Series 10 requirements, implementation of the carbon black MACT standard at its Moundville facility will lead to it satisfying the above-stated purposes of Series 10, be more protective of the SO₂ NAAQS, and lead to sensible control of sulfur emissions.

A. Problems with Current and Proposed Series 10 Requirements:

Under the developing MACT, the 2,000 ppm standard appears to support the stated purposes of the Series 10 regulations. However, Columbian also believes that the 50 grains standard is not supportive of the stated purposes of Series 10 in that it actually requires Columbian to emit more H₂S than it would otherwise emit. In addition, under the circumstances involving Columbian's operations, compliance with the 50 grains standard leads to a violation of the second stated purpose of Series 10, insuring that the best quality fuel available is used regardless of the Series requirements, nor does it protect ambient air quality.

Columbian's Moundville facility operates two distinct types of process units: the "tread" and "carcass" carbon black process units. (The terms tread and carcass relate to certain properties of the carbon black product that make them more appropriate for certain tire manufacturer applications.) Each of these processes generate tail gases that are virtually equivalent in terms of total sulfur content. However, the sulfur compound constituents of each gas stream differ, especially those involving COS, CS₂ and H₂S. Assuming the use of a typical carbon black feedstock oil containing 2.5% sulfur, the carcass process will lead to an emission of H₂S of approximately 81 grains per 100 cubic feet, whereas the tread process will lead to an emission of about one-quarter that concentration, or about 22 grains of H₂S per 100 cubic feet. However, the lower H₂S tread emissions will also contain higher levels of COS and CS₂ than the carcass process emissions.

⁶ Columbian has asserted, and still believes, that certain of its operations qualify it under the current exemption for fuel burning units combusting natural gas. See 45 CSR 10(10.3). By discussing the applicability of the above provisions herein, Columbian is not waiving its rights or arguments supporting its exemption under this and other provisions.

In most of its plants, Columbian uses about an equivalent amount of both tail gas streams as fuel for the drying of product within the plant, and the plants typically use about 25% to 30% of the total tail gases for drying. However, in order to achieve compliance with the existing 50 grains standard, Columbian's Moundsville plant must blend the low H₂S tread gas with the high carcass tail gas, but because of the lower levels of COS and CS₂ in the carcass tail gas emissions, the total sulfur content of each gas stream is basically equivalent and the resulting content of sulfur emissions from the combustion of the tail gases is virtually the same -- no matter what blend ratio is burned. Therefore, as a consequence of complying with the 50 grains standard, there is no reduction in sulfur emissions from the preferential burning of the lower H₂S tread gas and actually, more of the high H₂S carcass tail gas is currently emitted.

This 'disconnect' between the in-stack standard and goal of regulating emissions is further revealed by assessing the logical consequences from implementing an extreme control. Assuming, for the sake of argument, that Columbian scrubbed or otherwise installed new technology to totally eliminate sulfur from its emissions, it still could be determined to be in violation of the Series 10 grains standard; clearly an illogical result based on the purpose of the standard aimed at controlling "emissions" of sulfur oxides. Thus, Columbian believes that it is the underlying purpose of Series 10, to control the level of emissions of sulfur compounds, which should take precedence in interpreting the requirements of the Series 10 regulations.

The second stated purpose of Series 10, to use the best quality fuel available, and the protection of air quality in general, are also not supported under the circumstances. As described above, Columbian currently uses a portion of its byproduct tail gases to fuel the drying process at the plant; similar to that being done by other manufacturers. This tail gas must be considered as the best quality fuel available since, if Columbian did not use its tail gases for drying, an alternative fuel source would be required. This would lead to the emission of the combustion gases from the alternative fuel, plus the uncombusted emissions from all the carcass and tread processes would still be emitted. Thus, the second stated purpose of Series 10 and the protection of air quality in general would not be satisfied if Columbian was forced to use an alternative fuel for drying product or using the tail gases for the plant's other internal fuel needs.

B. Advantages of Implementing MACT Requirements:

Implementation of the EPA's MACT standards will necessitate changes in the operation of Columbian's Moundsville, West Virginia facility that will achieve the stated purposes of Series 10 and do a better job of protecting ambient air quality.

1. MACT Will Achieve Purpose Number 1 of Series 10 -- to prevent and control the emissions of sulfur oxides:

As previously stated, MACT will require Columbian to combust all of its tail gases to at least the 98% DRE level by 2003, virtually eliminating emissions of all HAPs, H₂S, CO and C₂H₂. This will also result in a significant increase in SO₂ emissions, triggering the federal PSD permitting process. Columbian will be required to:

- ENVIRONMENTAL PROTECTION AGENCY PAGE 010710 RIGHT PAGE
- a. Determine by sophisticated modeling and documenting that the NAAQS for SO₂ is not being exceeded with this change in emissions, thereby continuing to protect public health and the environment;
 - b. Determine and document that PSD increment levels for SO₂ are not being exceeded, thereby insuring that air quality is not being deteriorated; and
 - c. Determine and implement the Best Available Control Technology (BACT) for the control of SO₂ emissions from the plant, thereby insuring a high level of technological control.

Therefore, the PSD process that will be triggered by implementation of the MACT will ensure that SO₂ emissions are minimized as much as possible, achieve compliance with the NAAQS and satisfy the first stated purpose of Series 10.

2. MACT Will Achieve Purpose Number 2 of Series 10 – utilize the best quality fuel:

The single most important factor that determines the sulfur content of the carbon black tail gases and emissions is the sulfur content of the feedstock oil used. The PSD BACT analysis will cause Columbian to critically review sulfur levels in the feedstock oil. This will require an evaluation of recent carbon black PSD permits issued in other states, and lead to the identification of a sulfur content limit on the feedstock oil to be set as an enforceable limit for the plant. Because of the direct relationship between sulfur levels in feedstock oil and emissions, having such a feedstock limit determined from a BACT process insures that the MACT combusted tail gases will have the lowest BACT determined levels of sulfur possible. The BACT process will establish the best technologically and economically feasible controls for sulfur compounds covered under Series 10, including for fuels and, therefore, help satisfy the second stated purpose of Series 10 – insuring the use of the best quality fuel.

In addition, as previously explained, the use of tail gas as a fuel for drying product must be considered the best available fuel option. If not, the plant would have to use an additional fuel, resulting in the emission of all tail gases plus additional gases from using the alternate fuel. As part of the PSD process, Columbian will evaluate the conversion of the plant's existing boilers from natural gas to tail gas. This would have the benefit of reducing the extra emissions from using natural gas as the fuel for the plant's boilers. Thus, the same benefit from using tail gases for drying applies here: using the tail gases must be considered as the best available fuel, satisfying the second stated purpose of Series 10. Since there would be fewer emissions, using the tail gases would also serve to better protect ambient air quality.

Moreover, the purpose of the Series 10 hydrogen sulfide limit, to encourage use of the best fuels, is not applicable under the circumstances. It is Columbian's understanding from its experience in other states that the purpose of an H₂S grains limitation is typically to prevent facilities from buying "sour gas" – cheaper, high sulfur fuels. Series 10 proposed new subsection 5.1 contains this type of limit. However, Columbian is already required to use the best type of fuel based on the 2,000 ppm standard and as otherwise described herein and, in fact, already uses one of the lowest sulfur fuels of all U.S. carbon black facilities: 2.5%. It is questionable whether lower sulfur fuel is even

- a. Determine by sophisticated modeling and documenting that the NAAQS for SO₂ is not being exceeded with this change in emissions, thereby continuing to protect public health and the environment;
- b. Determine and document that PSD increment levels for SO₂ are not being exceeded, thereby insuring that air quality is not being deteriorated; and
- c. Determine and implement the Best Available Control Technology (BACT) for the control of SO₂ emissions from the plant, thereby insuring a high level of technological control.

Therefore, the PSD process that will be triggered by implementation of the MACT will ensure that SO₂ emissions are minimized as much as possible, achieve compliance with the NAAQS and satisfy the first stated purpose of Series 10.

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available, and even if it is, prior analyses indicate its use would be cost prohibitive. Thus, there is no separate beneficial purpose for the subsection 5.1 H₂S limit as it applies to fuel quality at Columbian's Moundsville facility.

3. Reliance on MACT Makes Sense:

In addition to the above, there are practical reasons the State should consider developing a MACT exception to the Series 10 regulations involving sulfur limitations, such as those proposed in Appendix A hereto. As explained, the MACT standard will lead to the control of HAPs and H₂S for carbon black facilities, and the Series 10 standards, including those in the most current proposal, regulate the same emissions. Because of the different requirements imposed by these standards, however, the overlap almost insures conflicts or inconsistencies that affected sources will have to address.⁷ OAQ may avoid this conflict by making a regulatory exception for carbon black sources covered by the MACT, essentially stating that compliance with the MACT shall be deemed to be compliance with overlapping portions of Series 10 (see Appendix A).

In addition, an exception based on the MACT would relieve affected sources from the extra work of having to demonstrate compliance with both regulations covering the same emissions, as will be required by Title V. Such a task will unduly burden Columbian.

Finally, overlapping Series 10 regulations are unnecessary. As detailed above, development of the carbon black MACT standard, as well as the other MACT standards, has involved an extremely lengthy, detailed process to identify what is "maximally" achievable to control covered emissions based on technological considerations. This is a thoroughly considered process that insures a high level of control; a process that surpasses that used to develop the overlapping state standards. Thus, development of a MACT exception to its standards would help OAQ avoid inconsistencies between authorities, avoid imposing any undue Title V burden on Columbian's facility covered by both federal and state requirements, and insure implementation of the more highly considered standard. Other West Virginia facilities share concerns relating to the MACT standards.⁸

VI. Comments Regarding Other Series 10 Subsections

A. Monitoring Section 8.2: Columbian is concerned that this section is ambiguous, subject to multiple connotations, such that differing interpretations will materially affect its ability to achieve compliance. For example, Columbian uses a "feedstock" hydrocarbon product that is not technically considered a "fuel" as this

⁷ Similar overlap with other MACT standards may lead to the same problem for other industries subject to a MACT -- see footnote no. 5 above.

⁸ Columbian is aware that operators of the only other West Virginia facilities covered by a MACT that Columbian was able to contact, Century Aluminum and Cabot, share similar concerns. Columbian has held several conversations with Century Aluminum and Cabot personnel regarding overlapping MACT and State regulations, and is aware that Century Aluminum submitted a letter to OAQ about their concerns. It seems likely that, as the burdens of various MACT standards are implemented, additional facilities will express similar concerns (see footnote no. 5 referencing Appendix B).

Section could be interpreted to target; however, given that this Section appears to cover manufacturing process and combustion sources, it would appear that OAQ would have intended it to cover facilities such as Columbian's facility in Moundsville. Thus, to the extent there are ambiguities in this Section, Columbian reserves the right to interpret the Section to allow for compliance in a manner it deems to be reasonable; for example, by developing a fuel analysis program that makes an allowance for conversion from feedstock/raw material containing sulfur, and for the subtraction of the sulfur not emitted in its carbon black product. In addition, Subsection 8.2.c.2 refers to "subsection 8.5"; however, there was no subsection 8.5 in either of the "final" revisions provided to Columbian (please see footnote No. 1 above). If there is a subsection 8.5, or any other revision section or subsection not provided to Columbian, Columbian reserves the right to comment on same at a later date.

B. Recordkeeping and Reporting Section 8.3: Columbian is similarly concerned that this section is ambiguous, subject to multiple connotations, for the same reasons discussed above in "A. Monitoring Section 8.2." Thus, to the extent there are an ambiguities in this Section, Columbian repeats the Section 8.2 comments here, including reserving the right to interpret the Section to allow for compliance in a manner it deems to be reasonable.

VII. Columbian's Consent Order and SIP Modification

Columbian is currently participating in an SO₂ NAAQS SIP modification for its Moundsville facility. Enforceability of the SIP will be achieved through development and implementation of a consent order. Given that control of sulfur oxides is common to the developing SIP, the P-MACT and the State's revision of Series 10, Columbian believes its proposal is ripe for consideration. The following summary of events leading up to the SIP modification should help put Columbian's proposed revision into perspective.

On July 4, 1995 the EPA agreed to resolve American Electric Power's ("AEP") petition filed on, or about, June 10, 1995 to modify the existing Federal Consent Decree affecting AEP's Kammer Plant located in Marshall County. The Federal Consent Decree modification was granted under the condition that the West Virginia OAQ commit, in writing, to developing a comprehensive State Implementation Plan ("SIP") revision and schedule that would include an SO₂ impact analysis from all relevant sources of SO₂ in the Marshall County area and provide for an attainment demonstration of the SO₂ NAAQS.

In August, 1995, Columbian, Bayer Corporation, Venture Coke Company and PPG Industries, Inc., with facilities located in Marshall County, West Virginia, and the Ormet Primary Aluminum Corporation, with a facility in Monroe County, Ohio formed the Industrial Sources Group ("ISG"). The ISG represents some of the larger facilities that are sources, or potential sources, of SO₂ in the Marshall County area.

On August 15, 1995 a meeting was held between representatives of the ISG and the OAQ during which the ISG proposed collecting meteorological data for use in dispersion modeling to serve as the basis for the SO₂ NAAQS attainment demonstration and SIP. OAQ, on September 22, 1995, submitted a letter to the EPA

committing the WVDEP to develop a comprehensive SIP revision for Marshall County in order to assess the impact of SO₂ emissions on the NAAQS. The letter also included a schedule for the SIP development. The EPA subsequently acknowledged OAQ's SIP committal and the schedule for SIP development and found that these provided an acceptable basis to modify the Federal Consent Decree schedule for compliance by the Kammer Plant.

The ISG submitted, on December 12, 1995, the Meteorological Data Protocol for the Marshall County SIP Study ("Met Protocol") to the OAQ, which was approved by the OAQ on January 7, 1996 and by the EPA on January 23, 1996.

The ISG collected met data for the Marshall County area from August 1, 1996 through July 31, 1997. The ISG, then, submitted the Dispersion Model Protocol for the Industrial Sources Group ("Model Protocol") for the Marshall County, West Virginia area on October 27, 1997. The Model Protocol was approved by the EPA on May 5, 1998 and by the OAQ on May 20, 1998.

On September 18, 1998, the ISG notified the OAQ that the dispersion modeling conducted in accordance with the approved Model Protocol was completed. Results of the dispersion modeling analysis showed that the SO₂ currently emitted by certain ISG companies and regulated under Series 10 may violate or substantially contribute to the projected violations of the SO₂ NAAQS within, or adjacent to, the Marshall County area.

ISG members, including Columbian, have been working with the OAQ to develop consent orders to establish SO₂ emission and operating rates to increase stack height and/or to implement other requirements sufficient to prevent violations to the SO₂ NAAQS within, or adjacent to, the Marshall County area. Columbian has been informed that, upon completion, OAQ plans to submit the executed orders to the EPA and request their incorporation into the SIP for the purpose of federal enforceability and to satisfy OAQ's responsibility under West Virginia law and the Federal Clean Air Act.

Thus, Columbian is in the position of currently participating in the development of a source specific SIP involving the SO₂ NAAQS and its Moundsville facility. It makes sense that the MACT emissions and the other considerations, discussed herein, be incorporated into that process. This, in fact, has already begun as Columbian has asked its consultant to model and evaluate a MACT scenario for compliance with the NAAQS. Columbian has coordinated with Mr. Tim Carroll and others at OAQ on this and is in the process of negotiating with OAQ on how best to account for the MACT scenario in its consent order.

Columbian is requesting the OAQ to help it find the most appropriate MACT exception to Series 10, and for incorporating same into the Series.

Appendix B

INDUSTRIAL SOURCE CATEGORIES OTHER THAN CARBON BLACK SUBJECT TO A FEDERAL MACT AND WHICH EMIT A SULFUR HAP COMPOUND (mostly COS and/or CS₂) AND POSSIBLY EMIT HYDROGEN SULFIDE

Source Category	Chemical
Mineral Wool Production	Carbonyl sulfide
Oil and Natural Gas Production	Carbonyl sulfide; Carbon disulfide
Publicly Owned Treatment Works (POTW)	Carbonyl sulfide; Carbon disulfide
Carbonyl Sulfide Production	Carbonyl sulfide; Carbon disulfide
Asphalt Processing	Carbonyl sulfide
Asphalt Roofing Manufacturing	Carbonyl sulfide
Petroleum Refineries - Catalytic Cracking (Fluid and other) Units and Sulfur	Carbonyl sulfide; Carbon disulfide
Synthetic Organic Chemical Manufacturing	Diethyl sulfate; Carbon disulfide; Dimethyl sulfate
Rayon Production	Carbon disulfide
Cellulose Food Casing Manufacturing	Carbon disulfide
Cellophane Production	Carbon disulfide
Rubber Chemicals Manufacturing	Carbon disulfide
Secondary Lead Smelting	Carbon disulfide
Pharmaceuticals Production	Carbon disulfide
Pesticides Active Ingredients Manufacturing	Carbon disulfide

Facsimile

FOR IMMEDIATE DELIVERY

To: Skip Cropp

Firm Name: Chief, OAQ

Phone:

Fax: 528798134079,13045583287

From: Richard Jacobs

Date: Tuesday, July 27, 1999 3:26:56 PM

Message:

Total Number of Pages, including this page: 15

If you do not receive all of the pages, please call 314-552-6000 as soon as possible.

Thank you,

Fax Department - Operator: _____ Time of Transmittal: _____ A.M./P.M.

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

Lammy
Laura
Karen

Karen

JUL 19 1999

Mr. Edward L. Kropp, Chief
Office of Air Quality
West Virginia Department of Environmental Protection
1558 Washington Street, East
Charleston, WV 15311-2599

Dear Mr. Kropp: *Kropp*

Thank you for the opportunity to comment on the proposed revisions to 45CSR10: To Prevent and Control Air Pollution from the Emission of Sulfur Oxides. The following comments address the serious concerns which we have concerning the proposed revisions.

Section 3.1.a. specifying emission limits for the Kammer Plant of Ohio Power Company remains unchanged from the current version of the regulation. Because the West Virginia emission limit of 6.8 pounds per million BTU has never been approved by the EPA, this section as written provides for a substantial relaxation of the West Virginia state implementation plan (SIP) as it relates to the Kammer Plant. This revision cannot be approved unless accompanied by an acceptable demonstration that the national ambient air quality standards for sulfur dioxide will be attained and maintained. As you know, there have been extensive discussions between EPA and OAQ concerning the Kammer Plant. It is our understanding that the intent of OAQ, as well as of Ohio Power, was to make the West Virginia requirement for the Kammer Plant the same as the existing SIP requirement.

The provisions of section 3.4.b. and the associated subsections constitute a generic emissions trading rule limited to applicability within one facility. In order to be acceptable these rules must be consistent with the Emissions Trading Policy Statement promulgated on December 4, 1986 (51 *Federal Register* 43814). The proposed revisions to 45CSR10 do not contain all of the required elements of the Emissions Trading Policy Statement. For example, Section 3.4.b.1. must include a qualification that certain, specified, demonstrations must be satisfied if the emissions increase at all emission sources with increasing emissions is greater than 25 tons per year. The specifics of the required demonstrations for other instances are contained in the Policy Statement. A demonstration that the source will not cause or contribute to a violation of the ambient air quality standards is not sufficient.

OPTIONAL FORM 99 (7-90)

FAX TRANSMITTAL

of pages *2*

To: <i>Edward Kropp</i>	From: <i>Denise Johnson</i>
Dept./Agency: <i>WV OAQ</i>	Phone #: <i>215-814-2192</i>
Fax #: <i>304-558-3287</i>	Fax #: <i>215-814-2124</i>

Customer Service Hotline

Please include the above comments to the record of comments on the proposed rule revision. Denis Lohman of my staff has been assigned to this project. He may be reached at (215) 814-2192. If you have any questions please contact Denis or Walter Wilkie, Acting Chief, Technical Assessment Branch at (215) 814-2150.

Sincerely,



Judith M. Katz, Director
Air Protection Division

Tammy
Karen -
Earl
Laura

Karen



Supply Business
Planning Division

800 Cabin Hill Drive
Greensburg, PA 15601-1689
(724) 837-3000 FAX: (724) 838-6888

July 16, 1999

JUL 19

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

Re: Proposed Modifications to 45 CSR 2 and 10

The West Virginia Division of Environmental Protection, Office of Air Quality recently published proposed revisions to several legislative rules including 45 CSR 2, "To Prevent and Control Particulate Air Pollution from Combustion of Fuel in Indirect Heat Exchangers" and 45 CSR 10, "To Prevent and Control Air Pollution from the Emission of Sulfur Oxides". These comments on the proposed revisions are provided on behalf of West Penn Power Company, Monongahela Power Company, and The Potomac Edison Company (all d/b/a "Allegheny Power") who own and/or operate electric generating facilities within West Virginia (herein after referred to as "Allegheny Power").

Allegheny Power was an active participant in the Stakeholder Regulatory Review Workgroup convened by the Office of Air Quality (OAQ) to review these rules. Allegheny Power extends its compliments to the OAQ staff for the long hours it committed to this effort. Allegheny Power is supportive of such a review process as a means to develop and improve state air policy. In some instances compromise was required and Allegheny Power supports the proposed revisions in the spirit of compromise. The proposed revisions, as a whole, are appropriate and result in improvement in the state air quality program.

Allegheny Power has also contributed to, and supports, the more detailed comments submitted by the West Virginia Chamber of Commerce.

If you would like to discuss these comments, please feel free to contact me by phone at (724) 830-5925 or e-mail at jmurph1@alleghenypower.com.

Allegheny Power appreciates the opportunity to comment on these proposed rule revisions and reserves the right to make additional comments and to amend, modify, or delete the comments herein prior to issuance of a final rule. The submission of these comments is not intended as a waiver of any rights to which Allegheny Power may be entitled by law, equity, practice or court order.

Sincerely,

A handwritten signature in cursive script that reads 'James T. Murphy'.
James T. Murphy
Air Quality Manager

**Public Hearing Statement of
Kathy G. Beckett
On Behalf of the West Virginia Chamber of Commerce
July 19, 1999**

My name is Kathy G. Beckett, an attorney with the law firm of Jackson & Kelly PLLC. I am offering the following statement on behalf of the West Virginia Chamber of Commerce ("the Chamber") concerning the rulemaking package presented for comment by the Office of Air Quality addressing 45 CSR 1, 2, 3, 4, 5, 6, 7, 10, 12, 16, 17, 18, 23, 25, 33, and 34. Although the Chamber will be filing more detailed written comments concerning each of these rules by the filing deadline of July 28, 1999, it would like to offer the following general comments on this rulemaking package.

The Office of Air Quality ("OAQ") held a public meeting in Flatwoods, WV on November 17, 1998, where it announced its goal of updating and "harmonizing" OAQ's existing rules in time for submittal to the 2000 Legislature. It was announced that all rules were open for discussion and review. With that announcement began a rigorous schedule of meetings to begin the process of collecting comments and ideas about the need to update and streamline the state's air quality regulatory program. For those of you who attended the meetings, I do not have to tell you about the tireless commitment of time the OAQ staff devoted to managing the review process. Additional support from the stakeholder participants combined to create a very rich experience.

The Chamber is a strong supporter of the stakeholder review process. The model where a state administrative agency invites the public to engage in an honest, thoughtful, open and informal exchange of interests and ideas with the goal of proposing public policy is an excellent one. Those who attended and participated in the meetings that have taken place over the past several months were presented with an opportunity to inquire as to the

purpose of various provisions, question one another's needs, suggest solutions to issues, and propose language, all of which were presented to the Chief for his consideration." The more varied the vantage points of those engaged in the discussion the more creative the answer became. The Chamber applauds this process and encourages the agency and the public to look for other opportunities to engage in such an exercise.

As will be identified in the written comments filed on behalf of the Chamber, there is a very delicate balance that is created in the spirit of compromise. Some of the proposed modifications that were the subject of the review process represent concepts that meet the specific needs and concerns of certain stakeholders. Recognition of the needs of all stakeholders and balancing those needs against on another is what the development of public policy is about. Great efforts were made during the discussions to blend the needs of the group into the recommended changes. The Chamber recommends that the OAQ to develop a thorough Response to Comments, as a means of recording the intent of the modifications that have been made.

What made this process work is the stated goal of streamlining and updating the program. Where appropriate, the OAQ has proposed incorporation of the updated federal air program. The OAQ has also proposed removal of provisions that are no longer useful. Although this package certainly represents progress, there remain antiquated regulatory concepts that we would all be well served to review again. Tossing away items from our past can be difficult, but the result could be a fresh, new, and efficient regulatory program.

Tonight the Chamber is participating in the next phase of the public review process by providing oral comments on the proposed regulatory changes that have been inspired, in part, by the recommendations of the stakeholders. The Chamber supports the stakeholder process and supports this rulemaking package.

**TO PREVENT AND CONTROL AIR POLLUTION FROM THE EMISSION OF
SULFUR OXIDES**

RESPONSE TO COMMENTS

On July 19, 1999 the Office of Air Quality (OAQ) held a public hearing to accept oral comments on proposed changes to 45CSR10 - "To Prevent and Control Air Pollution from the Emission of Sulfur Oxides." One oral comment was submitted, by Tim Mallen of American Electric Power (AEP). The Division of Environmental Protection, Office of Air Quality (OAQ) received written comments on the rule from American Electric Power (AEP), the West Virginia Chamber of Commerce, the United States Environmental Protection Agency (US EPA) Region III, Allegheny Power, Conni Gratop Lewis, and Richard P. Jacobs, of Thompson Coburn, LLP, for Columbian Chemicals Company. In addition, two persons commented at the public hearing concerning all of the OAQ's proposed rules. Both commenters were generally supportive of the proposed rules and the stakeholder process that was utilized by the OAQ to generate the proposed rules. One comment was received from the United States Environmental Protection Agency, Region III, requesting that the public comment period be extended. The OAQ responded to this comment by extending the comment period from July 19, 1999, to July 28, 1999. The OAQ has summarized these comments and provides the following response.

I. Commenter: AEP

COMMENT A. *(Oral comment by Tim Mallen, AEP, July 19, 1999)*
Commenter recognizes and supports the OAQ's efforts to update and streamline this rule.

RESPONSE A. No response required.

COMMENT B. *Subdivision 3.1.a, emission limit for the Kammer Plant.*
Commenter requested that the emission limit for the Kammer Plant be modified. Recent modeling completed as part of the Marshall County sulfur dioxide SIP revision process has determined that the proper SO₂ weight emission standard for the fuel burning units of the Kammer Plant should be the product of 2.7 and the total design heat inputs for all such.

RESPONSE B. The OAQ concurs and will make the change.

COMMENT C. *Subsection 3.8*
Commenter expressed concern that the language of subsection was unclear and could be interpreted to require 24-hour stack tests. Commenter requests deletion of "test to determine", which would in no way diminish the authority of the OAQ to require compliance testing, as that is granted in subdivision

8.1.a.

RESPONSE C. The OAQ agrees that the deletion of “tests to determine” does not diminish any authority that the agency has to require compliance testing. During the stakeholder process it was agreed to delete “tests to determine” in subsections 3.8, 4.2 and 5.4. The OAQ will delete “tests to determine” in subsections 3.8, 4.2 and 5.4.

COMMENT D. Subdivision 8.2.a
Commenter requested that “determine” be changed to “monitor”, to make it clear that monitoring is not intended as a demonstration test for compliance.

RESPONSE D. While OAQ agrees that monitoring is not an approved EPA test method to determine compliance, monitoring can be required to determine ongoing compliance. This is original language and OAQ does not believe that it needs to be changed.

COMMENT E. Subdivision 8.2.c
Commenter requested that “demonstrate” be changed to “monitor” to make it clear that monitoring is not intended as a demonstration test for compliance.

RESPONSE E. While OAQ agrees that monitoring is not an approved EPA test method to determine compliance, monitoring is used to demonstrate ongoing compliance; therefore, the OAQ believes that the change is not warranted.

COMMENT F. Subparagraph 8.2.c.1.A.
Commenter requested that, as agreed upon during the stakeholder process, a statement be included in this section confirming that sources meeting the requirements of 40CFR Part 75 (Acid Rain) Appendix B will be deemed to have fulfilled the requirements for the quality assurance requirements.

RESPONSE F. The OAQ agrees that it was agreed upon during the stakeholder process that a statement would be included indicating that compliance with 40CFR Part 75 shall be deemed to satisfy the requirements of 40CFR.60. This statement was included in paragraph 8.2.c.1. The OAQ believes this is sufficient to indicate that compliance with 40CFR Part 75 shall be deemed to be compliance with 40CFR Part 60.

COMMENT G. Paragraph 8.2.c.2
Commenter noted that the reference to subsection 8.5 should be subdivision

8.2.c.

RESPONSE G. OAQ concurs and will make the correction.

II. Commenter: US EPA

COMMENT A. Subdivision 3.1.a, emission limit for the Kammer Plant
Commenter noted that the current SIP emission limit for the Kammer Plant is 2.7 pounds per million BTU, and not the 6.8 pounds per million BTU in the current state version of 45CSR10. Commenter stated it was their understanding that it was the intent of OAQ, as well as Ohio Power, to make the State requirement for the Kammer Plant the same as the existing SIP requirement.

RESPONSE A. OAQ agrees and will change the provision back to the existing SIP limit of 2.7 pounds of sulfur dioxide per million BTU of heat input.

COMMENT B. Subdivision 3.4.b, allowable emission rates for individual stacks
Commenter believes that the provisions of subdivision 3.4.b and the associated paragraphs constitute a generic emissions trading rule limited to applicability within one facility. In order to be acceptable this rule must be consistent with the Emissions Trading Policy Statement promulgated on December 4, 1986 (51 Federal Register 43814). The proposed revisions to 45CSR10 do not contain all of the required elements of the Emissions Trading Policy Statement. For example, paragraph 3.4.b.1 must include a qualification that certain, specified, demonstrations must be satisfied if the emissions increase at all emission sources with increasing emissions is greater than 25 tons per year. The specifics of the required demonstrations for other instances are contained in the Policy Statement. A demonstration that the source will not cause or contribute to a violation of the ambient air quality standards is not sufficient.

RESPONSE B. The OAQ agrees with the commenter that subdivision 3.4.b is a type of emissions trading rule, and the criteria in paragraphs 3.4.b.1 through 3.4.b.6 are, in fact, quite similar to the criteria contained in OAQ's generic emission trading rule, 45CSR28, also recently proposed and now pending before the West Virginia Legislature. OAQ expects that any trading allowed under 3.4.b of 45CSR10 would also be subject to the provisions of 45CSR28. 45CSR28 was required to be developed by W.Va. Code § 22-5-18, which statutory section requires that the emissions trading program be consistent with federal law. In developing 45CSR28, the OAQ therefore considered various EPA guidance and policy statements, up to and including the March 1999 draft Economics Incentives Program (EIP) guidance document.

The OAQ will revise paragraph 3.4.b.4, by adding “and demonstrate compliance with any other applicable emissions banking and trading rules.”

III. Commenter: WV Chamber of Commerce

COMMENT A: Subdivision 3.4.b, allowable emission rates for individual stacks
Commenter supports the inclusion of these provisions.

RESPONSE A: No response required.

COMMENT B. Subdivision 4.1.e, de minimus operations
Commenter is supportive of the inclusion of subdivision 4.1.e as part of an effective regulatory program that targets those sources that have a reasonable potential of adversely impacting air quality and excludes those sources that do not.

RESPONSE B. No response required.

COMMENT C. Section 8, monitoring, recordkeeping and reporting
Commenter supports the regulatory revisions in the spirit of compromise.

RESPONSE C. No response required.

COMMENT D. Subsection 10.3, exemptions
Commenter supports the proposed modifications which are clearly intended to streamline the regulation and provide for an appropriate level of regulation commensurate with environmental impact.

RESPONSE D. No response required.

IV. Commenter: Allegheny Power

COMMENT A. 45CSR10
The commenter expressed support for the stakeholder process and the proposed revisions to 45CSR10 in the spirit of compromise.

RESPONSE A. No response required.

V. Commenter: Conni Gratop Lewis

COMMENT A. *Commenter expressed concern about the lack of deadlines throughout the*

proposed rules. Commenter believes the rules would be strengthened if such language was included in the rules where appropriate.

RESPONSE A. The OAQ believes that deadlines established in 45CSR10 are appropriate and sufficient.

COMMENT B. *Commenter expressed support for the stakeholder process and 45CSR10 as proposed.*

RESPONSE B. No response required.

VI. Commenter: Columbian Chemicals Company

COMMENT A. *Interaction of Reg 10 with proposed MACT for existing carbon black facilities*

Commenter expressed concern that the prohibition against burning a process gas stream with a hydrogen sulfide (H₂S) concentration of greater than 50 grains per 100 cubic feet of gas would prevent them from complying with the proposed maximum achievable control technology (MACT) standard for existing carbon black facilities. Commenter requested language be added to the proposed subsection 5.1 which would state “Wherein this paragraph regulates hydrogen sulfide contained in tail gases from carbon black facilities, which facilities are also subject to a Federal MACT standard imposing a 98% or greater destruction rate on HAP sulfur compounds, which controls will also significantly reduce or eliminate hydrogen sulfide emissions to the same degree, such facilities operating in compliance with the MACT shall be deemed to be in compliance with this Series.”

Commenter requested the addition of a new subsection 10.4 which would state: “Wherein this 45CSR10 Series and a Federal MACT standard both regulate certain sulfur compounds contained in tail gases from carbon black facilities, such facilities operating in compliance with the MACT shall be deemed to be in compliance with this Series to the extent that the MACT standard also controls the sulfur compounds regulated in this Series.”

RESPONSE A. The purpose of the prohibition against burning a process gas stream with a hydrogen sulfide (H₂S) concentration of greater than 50 grains per 100 cubic feet of gas is to limit the emission of sulfur oxides. The purpose of the Federal MACT standard is to control the emission of sulfur compounds which are hazardous air pollutants (HAPs). While it is true that the burning of tail gases from carbon black facilities will significantly reduce H₂S emissions, it will also significantly increase the emission of sulfur oxides. The stated purpose of 45CSR10 is to prevent and control air pollution from the emission of sulfur oxides.

The OAQ recognizes that the prohibition in 45CSR10 against burning a process gas stream with a hydrogen sulfide (H₂S) concentration of greater than 50 grains per 100 cubic feet of gas may preclude the most economically feasible means of compliance with the proposed MACT standard. However, the OAQ cannot countenance a violation of 45CSR10 in order to comply with a proposed MACT standard, when the effect is to increase emissions of the pollutant of concern under 45CSR10. The OAQ does not believe it is in the best interests of the public, the agency or the regulated community to approve such an exemption prior to final MACT approval, and, in fact, the State does not have the authority to do so.

The OAQ believes, however, that by deleting the proviso in subsection 5.1 which limits the exemption from the 50 grain standard to by-product coke production facilities, the prohibition against burning a process gas stream with a hydrogen sulfide (H₂S) concentration of greater than 50 grains per 100 cubic feet of gas will be removed, provided that a source is “operating in compliance with an emission control and mitigation plan approved by the Director and U.S. EPA.” Deletion of this language makes compliance with both 45CSR10 and the proposed MACT standard feasible. The OAQ will revise the rule accordingly.