



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: 45CSR12 - "Ambient Air Quality Standard for Nitrogen Dioxide"

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: 45CSR12 "Ambient Air Quality Standard fro Nitrogen Dioxide"

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

- 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

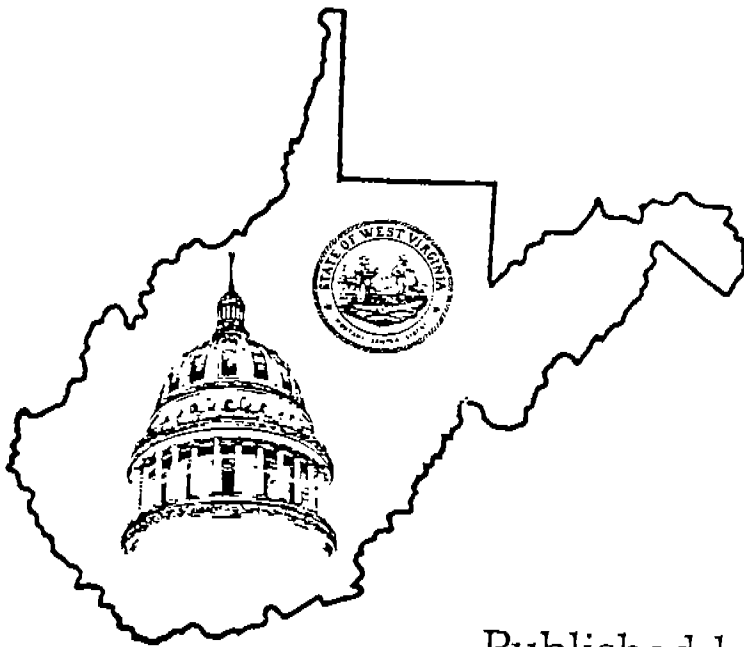
- c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

- d. Attach findings and determinations and reasons:

Attached N/A

WEST VIRGINIA REGISTER



Published by Ken Hechler, Secretary of State

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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
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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 (45-12)	Ambient Air Quality Standard for Nitrogen Dioxide Legislative	§§22-5-1 et seq.	July 19, 1999, 6:00 p.m. Same as Above
Air Quality (45-16)	Standards of Performance for New Stationary Sources Pursuant to 40 CFR Part 60 Legislative	§§22-5-1 et seq.	July 19, 1999, 6:00 p.m. Same as Above
Air Quality (45-17)	To Prevent & Control Particulate Matter Air Pollution from Materials Handling, Preparation, Storage & Other Sources of Fugitive Particulate Matter Legislative	§§22-5-1 et seq.	July 19, 1999, 6:00 p.m. Same as Above
Air Quality (45-18)	To Prevent & Control Particulate Air Pollution from Direct Meat- Firing Devices Legislative	§§22-5-1 et seq.	July 19, 1999, 6:00 p.m. Same as Above
Air Quality (45-23)	To Prevent & Control Emissions from Municipal Solid Waste Landfills Legislative	§§22-5-1 et seq.	July 19, 1999, 6:00 p.m. Same as Above
Air Quality (45-25)	To Prevent & Control Air Pollution from Hazardous Waste Treatment, Storage or Disposal Facilities Legislative	§§22-5-1 et seq. & §§22-18-1 et seq.	July 19, 1999, 6:00 p.m. Same as Above
Air Quality (45-33)	Acid Rain Provisions & Permits Legislative	§§22-5-1 et seq.	July 19, 1999, 6:00 p.m. Same as Above
Air Quality (45-34)	Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 63 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
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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						
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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						
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Air Quality (45-6)	To Prevent & Control Air Pollution from Combustion of Refuse \$5.80 Legislative	6/16/99	7/19/99						
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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						
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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		HB 2533	6/1/99	8/30/99
						Modified & Approved 1/12/99 Filed 1/22/99			

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		HB 2533	6/1/99	8/30/99
						Modified & Approved 12/15/98 Filed 1/5/99			

Air Quality (45-10)	To Prevent & Control Air Pollution from the Emission of Sulfur Oxides \$7.00 Legislative	6/16/99	7/19/99						
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Air Quality (45-12)	Ambient Air Quality Standard for Nitrogen Dioxide \$5.20 Legislative	6/16/99	7/19/99						
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LEGISLATIVE



WEST VIRGINIA
SECRETARY OF STATE
KENT BECHLER
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: GRAM WRITTEN: BOTH X
COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: MR. Lutz and L. Krupp, Chief

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.
The issues to be heard shall be limited to the proposed rule.
OFFICE OF AIR QUALITY
1558 Washington Street, East
Charleston, WV 25311

ATTACH A BRIEF SUMMARY OF YOUR PROPOSAL.
Karen G. Wilson
Karen G. Wilson, Attorney

WEST VIRGINIA
SECRETARY OF STATE
KENT BECHLER
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 2529

COMMENTS LIMITED TO: GRAM WRITTEN: BOTH X
COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: Edward L. Krupp, Chief

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.
The issues to be heard shall be limited to the proposed rule.
OFFICE OF AIR QUALITY
1558 Washington Street, East
Charleston, WV 25311 2529

ATTACH A BRIEF SUMMARY OF YOUR PROPOSAL.
Karen G. Wilson
Karen G. Wilson, Attorney

OTHER

NOTICE OF PUBLIC HEARING AND
PUBLIC COMMENT PERIOD

July 19, 1999

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.

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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 Mound 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. Submittal of comments by electronic mail will not be accepted.

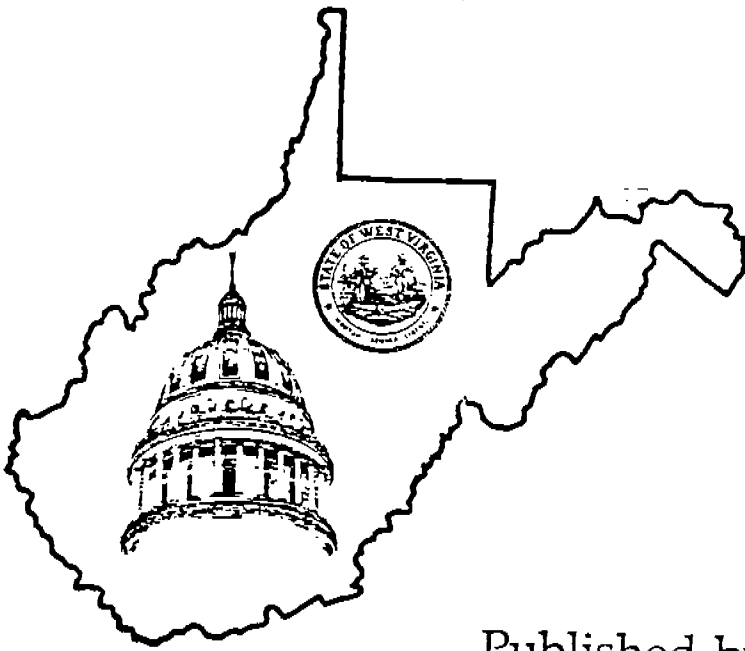
Persons interested in submitting written comments prior to the hearing should send them to:

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

WEST VIRGINIA REGISTER



Published by Ken Hechler, Secretary of State

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July 16, 1999

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*Secretary of State
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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

AGENCY	RULE/TYPE	AUTHORITY	HEARING/COMMENT PERIOD/LOCATION
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						

LEGISLATIVE

WEST VIRGINIA
SECRETARY OF STATE
ADMINISTRATIVE LAW DIVISION

KEN HECHLER

DATE: 4/24/99

FORM #2

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WEST VIRGINIA

SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

FORM #2

The Hat Mark in This Line

DATE: 4/24/99

45

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: _____

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 28, 1999 AT 5:00 PM

ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Edward L. Klepp, Chief

Office of Air Quality

1558 Washington Street East

Charleston, WV 25311-2599

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

Edward L. Klepp, Jr. v. State of West Virginia

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 PM

ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Edward L. Klepp, Chief

Office of Air Quality

1558 Washington Street East

Charleston, WV 25311-2599

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

State of West Virginia v. Klepp

OTHER

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 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-Fining 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"
 - 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 45CSR23, 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 45CSR21, 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 25311-2599

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



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. National Archives*

BUREAU OF ENVIRONMENT
DIVISION OF ENVIRONMENTAL PROTECTION

BRIEFING DOCUMENT

RULE TITLE: 45CSR12 - "Ambient Air Quality Standard for Nitrogen Dioxide"

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

B. SUMMARY OF RULE:

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

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

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:

Revisions are necessary to update the compliance test methods in accordance with the most recent federally approved test methods and to make the rule consistent with other Office of Air Quality rules establishing ambient air quality standards. 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:

A federal counterpart to this proposed rule exists. In accordance with the Director's recommendation, and with limited exception, the Office of Air Quality proposes that the rule incorporate by reference the federal counterparts.

Because the proposed rule incorporates by reference the federal counterpart, no determination of stringency is required.

E. CONSTITUTIONAL TAKINGS DETERMINATION:

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

F. CONSULTATION WITH THE ENVIRONMENTAL PROTECTION ADVISORY COUNCIL:

At their 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 ongoing 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: 45CSR12 - "Ambient Air Quality Standard for Nitrogen Dioxide"

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 actual revisions to this rule will have no additional economic impact because they impose no additional requirements beyond the current federal requirements.
3. Objectives of these rules: This rule revises the ambient air quality standards for nitrogen dioxide to conform to those promulgated by the U.S. EPA under the federal Clean Air Act, as amended. Promulgation of this rule by the Legislature is necessary for the State to fulfill its responsibilities under the Clean Air Act.

Appendix B
Fiscal Note For Proposed Rules
Page Two

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

See Section 2.

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

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

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

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

Date: 6/11/99

Signature of Agency Head or Authorized Representative

Karen G. Watson

Karen G. Watson, Attorney

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

Aug 5 10 05 AM '99
OFFICE OF LEGISLATIVE
SECURITY

SERIES 12
AMBIENT AIR QUALITY STANDARD FOR NITROGEN DIOXIDE

§45-12-1. General.

1.1. Scope. -- ~~Series 12 establishes~~ The purpose of this rule is to establish ambient air quality standards for nitrogen dioxide equivalent to those national primary and secondary ambient air quality standards established by the U.S. EPA.

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

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

1.3. Filing Date. -- ~~February 2, 1972.~~

1.4. Effective Date. -- ~~March 15, 1972.~~

1.5. Former Rules -- This legislative rule amends 45CSR12 "Ambient Air Quality Standard for Nitrogen Dioxide" which was filed February 2, 1972, and which became effective March 15, 1972.

§45-12-2. Anti-Degradation Policy.

2.1. ~~In Pursuant to~~ the best interests of the State of West Virginia, it is the objective of the Director to obtain and maintain the cleanest air possible, consistent with the best available technol-

ogy.

2.2. Where the present ambient air is of better quality than the established standards, the Director will develop long-range plans to protect the difference between the present quality and the established standards. The plans will be based upon the best available forecasts of probable land and air uses in ~~such~~ these areas of high air quality.

2.3. The air quality of these areas will not be lowered unless it has been clearly demonstrated to the Director that such a change is justifiable as a result of necessary economic or social development and will not result in a statutory air pollution. ~~2.4.~~ This will require that any industrial, public, or private project or development which could constitute a new source of air pollutants, within an area of such high air quality, provide the best practicable control available under existing technology as part of the initial project ~~or development.~~

§45-12-3. Definitions.

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

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

~~3.3. [Reserved]~~

~~3.4. "Person" means any and all persons; natural or artificial, including any municipal; public, or private corporation organized or existing under the law of this or any other state or country; and any firm, partnership, or association of whatever nature.~~

~~3.5. "Standard Conditions" means, for the purposes of this rule, a temperature of 25 degrees C and a pressure of 760 millimeters of mercury column.~~

~~3.6.3.3 "Ambient Air Quality Standard" means the numerical expression of a specified concentration level for a particular air pollutant in the ambient air and the time-averaging interval over which that concentration level is measured.~~

§45-12-4. Ambient Air Quality Standard.

4.1. The following ambient air quality standard shall not be exceeded ~~at any sampling site:~~

Nitrogen Dioxide

Annual Arithmetic Mean - 100 micrograms per cubic meter (~~0.050~~0.053 parts per million)

§45-12-5. Methods of Measurement.

5.1. Nitrogen dioxide concentrations shall be ~~determined by any~~ measured in the ambient air by:

5.1.a. a reference method based on Appendix E of the methods listed below or by such other methods approved as equally or more specific, accurate, sensitive, 40 CFR Part 50 and reproducible by the Director designated in accordance with 40 CFR Part 53; or

~~5.1.a. The Jacobs-Hocheiser method;~~

~~5.1.b. The use of a continuous sampling and recording instrument based on coulometric, colorimetric, or an equivalent principle.~~

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

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

ORIGINAL

In the matter of:

PUBLIC HEARING ON PROPOSED LEGISLATIVE RULE

45 CSR 12 "Ambient Air Quality Standard for
Nitrogen Dioxide"

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 6:31 p.m. on the 19th day of July 1999, pursuant to notice.

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 12, "Ambient Air Quality Standards for
22 Nitrogen Dioxide." The purpose of this rule is to
23 establish ambient air quality standards for nitrogen
24 dioxide, equivalent to those national primary and

1 secondary ambient air quality standards established by the
2 U.S. Environmental Protection Agency.

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

15 Revisions are necessary to update the compliance test
16 methods in accordance with the most recent federally
17 approved test methods and to make the rule consistent with
18 other Office of Air Quality rules establishing ambient air
19 quality standards. The revisions proposed herein were
20 initiated by the Office of Air Quality as part of a broad
21 effort to modernize and streamline all the Office rules.
22 The current revision process is also intended to update
23 and harmonize this rule with other rules of the Office of
24 Air Quality. The proposed revisions are the result of a

1 thorough review in a stakeholder process that was
2 inclusive of the Office of Air Quality, representatives of
3 the regulated community, concerned citizens and the
4 environmental community.

5 Upon authorization and promulgation of revisions to
6 45 CSR 12, the Office of Air Quality will seek federal
7 approval of the rule change by the U.S. Environmental
8 Protection Agency for inclusion in the State
9 Implementation Plan for the Federal Clean Air Act.

10 The floor is now open for public comment. (No
11 response.) There being nothing further, the public
12 hearing for 45 CSR 12 is concluded.

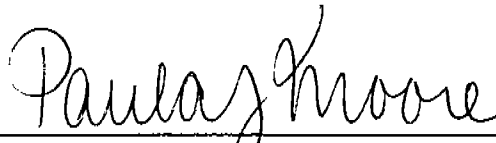
13 (WHEREUPON, the hearing was
14 concluded at 6:33 p.m.)

WEST VIRGINIA DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF AIR QUALITY

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

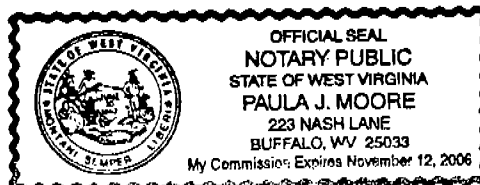
I, the undersigned, Paula J. Moore, a Certified Court Reporter and Notary Public within and for the State of West Virginia, duly commissioned and qualified, do hereby certify that the foregoing is, to the best of my skill and ability, a true and accurate transcript of all the proceedings had in the aforementioned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

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



Certified Court Reporter
Notary Public

My commission expires November 12, 2006.



Division of Environmental Protection

6:00 PM

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

ADDRESS 4SCSR12 COMMENT YES NO

NAME	ADDRESS	COMMENT	YES	NO
1. Gami Grapp Lewis - LNW	9408 Veneta Ave SE			
2. Tom O'Connell	HC 80 BOND A Klendon WV			
3. Bill Hauer	AC 65 Box 42-A Lookout WV			
4. Fred Durban	1615 Washington St East			✓
5. Ken Ward	Charleston Gazette 1001 Virginia St, E, City			✓
6. Dian Miller	WV MPO 1624 KANAWHA BLVD. CHARLESTON, WV 25301			
7. Laura Crouder	WV DEP CAC 1555 Washington St E Charleston, WV			✓
8. EARL DUNNIGLEY	"			✓
9. Jesse Atkins	"			✓
10. Robert Keastley	"			✓
11. Karen Watson	" 1615 Wgikington St. E, Chas 25311			✓
12. JAMES KOTCOB	412 HOME-AWAY ROAD, MORGANTOWN, WV 26505			✓
13. Gerald Bollner	PO Box 68 Washington, WV 26180 GE Plastics			✓
14. Sam Nixon	WV DEP EAD 10 MacTurkin Rd Nitro 25143			
15. John Bereaict	WV DEP OAG CHARLESTON			✓

Division of **E**nvironmental **P**rotection

6:00 pm

Public Hearing: OAQ Legislative Rules - 2000 Session

Time/Date: July 19, 1999

COMMENT
YES NO

45CSK12

ADDRESS

NAME

	NAME	ADDRESS	COMMENT YES	COMMENT NO
1.	Jim Morrison	Box 144 Capuley, WV 24931		
2.	Joseph Robert	Box 66 Charleston 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.	MSC 2000 NWC 21 Evans City, WV 26020		X
7.				
8.				
9.				
10.				
11.				
12.				
13.				
14.				
15.				

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

Timmy
Kaiser
L. Lewis
10/28/99
ECL

Kaiser

11
103

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

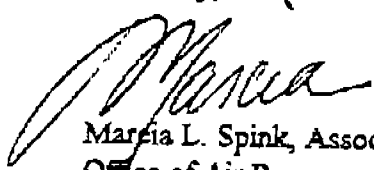
Dear Skipp:

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 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,


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	304/558-2496	
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.		



United States Department of the Interior

NATIONAL PARK SERVICE

Shenandoah National Park
3655 U.S. Hwy. 211 East
Luray, Virginia 22835-9036

IN REPLY REFER TO:

N3615

July 28, 1999

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

Dear Mr. Kropp:

We have reviewed West Virginia's proposed rules 45CSR12 (Nitrogen Dioxide), 45CSR16 (New Stationary Sources), and 45CSR33 (Acid Rain). We have no specific comments related to 45CSR16 or 45CSR33. Our comments on 45CSR12 are discussed below.

Nitrogen oxides are one of two ground-level ozone precursors. During the 1996-1998 period, VDEQ data show that Shenandoah National Park was being exposed to levels of ozone that were above the new 8-hour ozone standard to protect human health. Based on historic (1983-present) park ozone data, it is almost certain that the 1997-1999 period will also exceed the 8-hour standard. Shenandoah is also home to at least 20 ozone-sensitive plant species, and the Park's biologically relevant ozone metrics are among the highest of over 50 Class I national parks and wilderness areas with ozone monitors. Shenandoah's cumulative ozone exposures far exceed the US EPA's suggested secondary standard to protect vegetation, and ozone levels have been increasing in the 1990's.

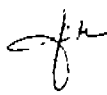
Therefore, we encourage West Virginia to add a new provision related to "Remedial Policy" that acknowledges the key role that nitrogen oxides play in attainment and maintenance of the new national ambient air quality standard for ozone in West Virginia and downwind areas. We also recommend deletion of provision 2.3 of 45-12-2 -- Anti-Degradation Policy. West Virginia has two Class I wilderness areas and is upwind from the Class I Shenandoah National Park and numerous Class II park and forest areas. Provision 2.3 may exempt certain sources from clean air requirements and appears to be inconsistent with one of the stated purposes of the Prevention of Significant Deterioration (PSD) program "to preserve, protect, and enhance the air quality in national parks, national wilderness areas, national monuments, national seashores, and other areas of special national or regional natural, recreational, scenic, or historic value." Moreover, Best Available Control Technology (as opposed to "best practicable control available") is already required by PSD regulations.

Tammy
Karen
Fred

002
Karen

We appreciate the opportunity to comment on West Virginia's proposed regulations. If you have any questions regarding our comments, please contact Christi Gordon, Air Program Manager at Shenandoah National Park, at (540)999-3499.

Sincerely,

 *for* *Constance A. Ridd*
Douglas K. Morris
Superintendent



NATURAL AND CULTURAL RESOURCES
Shenandoah National Park
3655 US Hwy 211E
Luray, Virginia
22835



FAX COVER SHEET

DATE: 7/28/99

TIME: _____

FAX NUMBER: (540)999-3693

NUMBER OF PAGES TO FOLLOW: 2 FAX # 304-558-3287

TO: Edward L. Kropp, Chief OAQ

FROM: Christi Gordon

SUBJECT: Comments on proposed WV rules

SPECIAL INSTRUCTIONS: Our office will call to
confirm your receipt before
5:00 pm 7/28/99 deadline.
Thanks, Christi.

If there is a problem, call: (540)999-3499

Thank You.

**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.⁷ 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 ^{and the law} 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.

45CSR12

AMBIENT AIR QUALITY STANDARD FOR NITROGEN DIOXIDE

RESPONSE TO COMMENTS

One comment was received from the U.S. Environmental Protection Agency, Region III, requesting that the public comment period be extended. The OAQ responded by extending the comment period from July 19, 1999 to July 28, 1999. At the public hearing on proposed revisions to 45CSR12 conducted on July 19, 1999, two persons commented concerning all of the OAQ's proposed rules, including 45CSR12. Both commenters were generally supportive of the proposed rules and the stakeholder process that was utilized by the OAQ to develop the proposed rules. One written comment specific to 45CSR12 was received from the National Park Service, Shenandoah National Park. Additionally, one written comment was received from an individual concerning all the proposed rules, including 45CSR12. The OAQ has summarized these written comments and provides the following response.

**I. COMMENTER: Mr. Douglas K. Morris, Superintendent, Shenandoah National Park
U.S. Department of the Interior, National Park Service**

COMMENT A. *Relationship of NO₂ to Ozone*
(Written Comments - July 28, 1999)

The commenter encouraged the State to add a new provision related to "Remedial Policy" acknowledging the key role that nitrogen oxides play in attainment and maintenance of the new national ambient air quality standard for ozone in West Virginia and downwind areas.

RESPONSE A. The purpose of this rule is to adopt standards for nitrogen dioxide (NO₂) ambient air concentrations equivalent to the federal standards. The counterpart federal standard (40CFR§50.11) does not refer to any relationship between NO₂ and other air pollutants. The OAQ acknowledges that NO₂, a component of nitrogen oxides (NO_x), is a precursor of ground-level ozone but believes it unnecessary to add the proposed provision.

COMMENT B. *Objection to Anti-Degradation Policy Language*
(Written Comments - July 28, 1999)

The commenter suggests that section 45-12-2.3 be deleted, arguing that it may exempt certain sources from clean air requirements and may conflict with Prevention of Significant Deterioration (PSD) goals.

RESPONSE B. Similar language was included in the previous version of this rule and dates back to 1972. Comparable provisions appear in all of the OAQ's ambient air quality rules. The intent is to establish a policy of maintaining good air quality in "clean" areas where present air quality is better than the established standards. The State's PSD requirements are clearly established in 45CSR14, *Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration*. Nothing in subsection 2.3 exempts sources from PSD requirements. Therefore, subsection 2.3 will be retained.

II. COMMENTER: Conni Gratop Lewis

COMMENT A. *Lack of Deadlines*
 (Written Comments - July 27, 1999)
 The commenter expressed concern about the lack of deadlines in this and other proposed rules and believes that such language where appropriate would strengthen the rule.

RESPONSE A. The purpose of this rule is to adopt standards for nitrogen dioxide (NO₂) ambient air concentrations equivalent to the federal standards. Since the proposed standards would become effective upon the rule's effective date, this general comment seems inapplicable to 45CSR12. Therefore, no related amendments will be incorporated into the rule.