

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

Form #3

Do Not Mark In This Box

2007 DEC 19 PM 2:41

OFFICE OF THE
SECRETARY OF STATE

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

AGENCY: WVDEP - Division of Air Quality TITLE NUMBER: 45

CITE AUTHORITY: WV Code §22-5-4

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 15

TITLE OF RULE BEING AMENDED: Repeal - Emission Standards for Hazardous Air
Pollutants Pursuant to 40 CFR Part 61

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.


Authorized Signature

#4.60

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: December 18, 2007

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) WV Department of Environmental Protection
Division of Air Quality
601 57th Street, S.E.
Charleston, West Virginia 25304
Phone: 304-926-0499 ext. 1237

LEGISLATIVE RULE TITLE: Repeal -- 45CSR15 - Emission Standards for Hazardous Air
Pollutants Pursuant to 40 CFR Part 61

1. Authorizing statute(s) citation W.Va. Code §22-5-4

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
November 16, 2007

b. What other notice, including advertising, did you give of the hearing?
Posted on the Department of Environmental Protection's web site under "Calendar of Events".
Also posted on the Division of Air Quality's web site under "Public Notice and Comment".
Notice also sent to those on the Department's Press Release and Public Notice Mailing Lists.

c. Date of Public Hearing(s) *or* Public Comment Period ended:
December 17, 2007

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.
Attached _____ No comments received X

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

December 19, 2007

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

John A. Benedict, Director
601 57th Street, S.E.
Charleston, WV 25304

Tamra Mowrer, Administrative Secretary
601 57th Street, S.E.
Charleston, WV 25304

Phone: 304 926-0499

Phone: 304 926-0499

Fax: 304 926-0488

Fax: 304 926-0488

e-mail: jbenedict@wvdep.org

e-mail: tmowrer@wvdep.org

- 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)

James Mason, Technical Analyst III
601 57th Street, S.E.
Charleston, WV 25304

Phone: 304 926-0499 ext. 1200

Fax: 304 926-0479

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 _____

**DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF AIR QUALITY**

BRIEFING DOCUMENT

Rule Title: 45CSR15 - "Emission Standards For Hazardous Air Pollutants Pursuant To 40 CFR Part 61"

A. AUTHORITY: W.Va. Code §22-5-4

B. SUMMARY OF RULE:

The Department of Environmental Protection, Division of Air Quality, is proposing to repeal 45CSR15 as a part of its rule consolidation and streamlining efforts. These efforts will result in consolidating several existing rules addressing the same general subject into a fewer number of rules to provide a more efficient and user-friendly set of rules for the regulated community and the general public.

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:

The substantive provisions of 45CSR15 have been updated and included in the provisions of the agency-approved rule 45CSR34, previously filed with the Secretary of State on July 25, 2007, and proposed for authorization by the 2008 Legislature.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 45CSR15 - "Emission Standards For Hazardous Air Pollutants Pursuant To 40 CFR Part 61"

Type of Rule: X Legislative Interpretive Procedural

Agency: Division of Air Quality

Address: 601 57th Street SE
Charleston, WV 25304

Phone Number: 926-0475

Email: tmowrer@wvdep.org

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The Department of Environmental Protection, Division of Air Quality, is proposing to repeal 45CSR15 as a part of its rule consolidation and streamlining efforts. These efforts will result in consolidating several existing rules addressing the same general subject into a fewer number of rules to provide a more efficient and user-friendly set of rules for the regulated community and the general public.

The substantive provisions of 45CSR15 have been updated and included in the provisions of the agency-approved rule 45CSR34, previously filed with the Secretary of State on July 25, 2007, and proposed for authorization by the 2008 Legislature. The proposed repeal of this rule should cause no additional impact on costs and revenues of state government.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR

Effect of Proposal	2008 Increase/Decrease (use "-")	2009 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	\$ 0	\$ 0	\$ 0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs & Alterations	0	0	0
Assets	0	0	0
Equipment	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

Rule Title: 45CSR15 - "Emission Standards For Hazardous Air Pollutants Pursuant To 40 CFR Part 61"

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

The proposed repeal of this rule will have no effect on the costs to the Division of Air Quality. Refer to above explanation.

MEMORANDUM

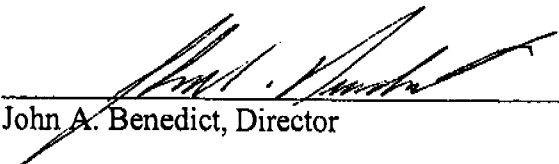
Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

The Department of Environmental Protection, Division of Air Quality, is proposing to repeal 45CSR15 as a part of its rule consolidation and streamlining efforts. These efforts will result in consolidating several existing rules addressing the same general subject into a fewer number of rules to provide a more efficient and user-friendly set of rules for the regulated community and the general public.

The substantive provisions of 45CSR15 have been updated and included in the provisions of the agency-approved rule 45CSR34, previously filed with the Secretary of State on July 25, 2007, and proposed for authorization by the 2008 Legislature. The proposed repeal of this rule should cause no additional impact on costs and revenues of state government.

Date: November 14, 2007

Signature of Agency Head or Authorized Representative



John A. Benedict, Director

FILED

2007 DEC 19 PM 2:41

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

WILLIAM B. BURNIA
SECRETARY OF STATE

SERIES 15
EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS
PURSUANT TO 40 CFR PART 61

~~§45-15-1. General:~~

~~1.1. Scope. -- This rule establishes and adopts emission standards for hazardous air pollutants promulgated by the United States Environmental Protection Agency pursuant to 40 CFR Part 61 and section 112 of the federal Clean Air Act, as amended (CAA). This rule codifies general procedures and criteria to implement emission standards for stationary sources that emit (or have the potential to emit) one or more of the eight substances listed as hazardous air pollutants in 40 CFR §61.01(a). The Secretary hereby adopts these standards by reference. The Secretary also adopts associated reference methods, performance specifications and other test methods which are appended to these standards.~~

~~1.2. Authority. -- W. Va. Code §22-5-4.~~

~~1.3. Filing Date. -- April 28, 2006:~~

~~1.4. Effective Date. -- June 1, 2006:~~

~~1.5. Incorporation by Reference. -- Federal Counterpart Regulation: The Secretary has determined that a federal counterpart regulation exists; and in accordance with the Secretary's recommendation, with limited exception, this rule incorporates by reference 40 CFR Parts 61 and 65, to the extent referenced in 40 CFR Part 61, effective June 1, 2005.~~

~~1.6. Former Rules. -- This legislative rule amends 45CSR15 "Emission Standards For Hazardous Air Pollutants Pursuant to 40 CFR Part 61" which was filed May 20, 2005, and which became effective June 1, 2005.~~

~~§45-15-2. Definitions:~~

~~2.1. "Administrator" means the Administrator of the United States Environmental Protection Agency or his or her authorized representative.~~

~~2.2. "Clean Air Act" ("CAA") means 42 U.S.C. §7401 et seq.~~

~~2.3. "Hazardous air pollutant" means any air pollutant listed pursuant to 40 CFR Part 61.01(a).~~

~~2.4. "Secretary" means the Secretary of the Department of Environmental Protection or other person to whom the Secretary has delegated authority or duties pursuant to W. Va. Code §§22-1-6 or 22-1-8.~~

~~2.5. Other words and phrases used in this rule, unless otherwise indicated, will have the meaning ascribed to them in 40 CFR Part 61. Words and phrases not defined therein will have the meaning given to them in the federal Clean Air Act.~~

~~§45-15-3. Requirements:~~

~~3.1. No person may construct, reconstruct, modify, or operate, or cause to be constructed, reconstructed, modified, or operated any source subject to the provisions of 40 CFR Part 61 which results or will result in a violation of this rule.~~

~~§45-15-4. Adoption of Standards:~~

~~4.1. Standards. -- The Secretary hereby adopts and incorporates by reference the provisions of 40 CFR Parts 61 and 65, to the extent referenced in 40 CFR Part 61, including any~~

~~reference methods, performance specifications and other test methods which are appended to these standards and contained in 40 CFR Parts 61 and 65; effective June 1, 2005, for the purposes of implementing a program for emission standards for hazardous air pollutants, except as follows:~~

~~4.1.a. 40 CFR §61.16 is amended to provide that information shall be available to the public in accordance with W. Va. Code §§22-5-1 et seq., 29B-1-1 et seq., and 45CSR31; and~~

~~4.1.b. Subparts B, H, I, K, Q, R, T, and W; Methods 111, 114, 115 and Appendix D and E of 40 CFR Part 61 will be excluded:~~

§45-15-5. Secretary.

~~5.1. Any and all references in 40 CFR Parts 61 and 65 to the "Administrator" are amended to be the "Secretary" except as follows:~~

~~5.1.a. where the federal regulations specifically provide that the Administrator will retain authority and not transfer authority to the Secretary;~~

~~5.1.b. where provisions occur which refer to:~~

~~5.1.b.1. alternate means of emission limitations;~~

~~5.1.b.2. alternate control technologies;~~

~~5.1.b.3. innovative technology waivers;~~

~~5.1.b.4. alternate test methods;~~

~~5.1.b.5. alternate monitoring methods;~~

~~5.1.b.6. waivers/adjustments to record-keeping and reporting;~~

~~5.1.b.7. emissions averaging; or~~

~~5.1.b.8. applicability determinations; or~~

~~5.1.c. where the context of the regulation clearly requires otherwise.~~

§45-15-6. Permits.

~~6.1. Nothing contained in this adoption by reference must be construed or inferred to mean that permit requirements in accordance with applicable rules will in any way be limited or inapplicable.~~

§45-15-7. Inconsistency Between Rules.

~~7.1. In the event of any inconsistency between this rule and any other rule of the West Virginia Department of Environmental Protection; the inconsistency will be resolved by the determination of the Secretary and the determination will be based upon the application of the more stringent provision, term, condition, method or rule.~~

**December 17, 2007 at 6PM
Public hearing on the repeal of 45CSR9 - 45CSR12 - 45CSR15 - 45CSR24.**

Do you wish to speak?	NAME	ADDRESS	PHONE #
No	Jim Mason	WV DEPPAR	926-0499/200
No	Dan Nixon	WV DEP/OEA	284-0499 ext 1300

Public Hearing - December 17, 2007 at 6PM
Public hearing on the repeal of 45CSR9 - 45CSR12 - 45CSR15 - 45CSR24
Held at DEP Headquarters Kanawha City, WV

Jim Mason: Good evening, my name is Jim Mason it's December 17th 6:20 p. m. public hearing. Public hearing number one. The purpose of this public hearing is to accept comments on the proposed repeal of 45CSR9 - *Ambient Air Quality Standards for Carbon Monoxide and Ozone*. The Department of Environmental Protection, Division of Air Quality, is proposing to repeal 45CSR9 as a part of its rule consolidation and streamlining efforts. These efforts will result in consolidating several existing rules addressing the same general subject into a fewer number of rules to provide a more efficient and user-friendly set of rules for the regulated community and the general public. The substantive provisions of 45CSR9 have been updated and included in the provisions of the agency-approved rule 45CSR8, previously filed with the Secretary of State on July 26, 2007, and proposed for authorization by the 2008 Legislature. The floor is now open for comments. Please state your name and any affiliation. There being nothing further, this public hearing for the proposed repeal of 45CSR9 is concluded.

Jim Mason: The purpose of this public hearing is to accept comments on the proposed repeal of 45CSR12 - *Ambient Air Quality Standard for Nitrogen Dioxide*. The Department of Environmental Protection, Division of Air Quality, is proposing to repeal 45CSR12 as a part of its rule consolidation and streamlining efforts. These efforts will result in consolidating several existing rules addressing the same general subject into a fewer number of rules to provide a more efficient and user-friendly set of rules for the regulated community and the general public. The substantive provisions of 45CSR12 have been updated and included in the provisions of the agency-approved rule 45CSR8, previously filed with the Secretary of State on July 26, 2007, and proposed for authorization by the 2008 Legislature. The floor is now open for comments. Please state your name and any affiliation. There being nothing further, this public hearing for the proposed repeal of 45CSR12 is concluded.

Jim Mason: The purpose of this public hearing is to accept comments on the proposed repeal of 45CSR15 - *Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 61*. The Department of Environmental Protection, Division of Air Quality, is proposing to repeal 45CSR15 as a part of its rule consolidation and streamlining efforts. These efforts will result in consolidating several existing rules addressing the same general subject into a fewer number of rules to provide a more efficient and user-friendly set of rules for the regulated

community and the general public. The substantive provisions of 45CSR15 have been updated and included in the provisions of the agency-approved rule 45CSR34, previously filed with the Secretary of State on July 25, 2007, and proposed for authorization by the 2008 Legislature. The floor is now open for comments. Please state your name and any affiliation. There being nothing further, this public hearing for the proposed repeal of 45CSR15 is concluded.

Jim Mason: The purpose of this public hearing is to accept comments on the proposed repeal of 45CSR24 - *To Prevent and Control Emissions from Hospital/ Medical/ Infectious Waste Incinerators*. The Department of Environmental Protection, Division of Air Quality, is proposing to repeal 45CSR24 as a part of its rule consolidation and streamlining efforts. These efforts will result in consolidating several existing rules addressing the same general subject into a fewer number of rules to provide a more efficient and user-friendly set of rules for the regulated community and the general public. The substantive provisions of 45CSR24 have been updated and included in the provisions of the agency-approved rule 45CSR18, previously filed with the Secretary of State on July 26, 2007, and proposed for authorization by the 2008 Legislature. The floor is now open for comments. Please state your name and any affiliation. There being nothing further, this public hearing for the proposed repeal of 45CSR24 is concluded.

DEP Personnel present at meeting:

Public Information: Richard Carter

Environmental Advocate: Pam Nixon

DAQ Planning/Program Development: Jim Mason

I submit this transcript and swear that it is true and accurate copy, to the best of my ability, of the public hearing held on Monday, December 17, 2007 for the repeal of 45CSR9 - 45CSR12 - 45CSR15 - 45CSR24.

*Rich Carter, Public Information Specialist III, DEP Public Information Office
18 December 2007*

45CSR15

EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS PURSUANT TO 40 CFR PART 61

RESPONSE TO COMMENTS

On November 16, 2007, the Division of Air Quality (DAQ) commenced a thirty day public comment period and subsequently held a public hearing on December 17, 2007 to accept oral comments on the proposed repeal of legislative rule 45CSR15. Written comments were also accepted through 6:00 PM on Monday, December 17, 2007. No commenter submitted written comments regarding the proposed repeal of rule 45CSR15, and no commenter provided verbal comments.