

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: July 29, 2005

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: 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:
June 15, 2005
- b. What other notice, including advertising, did you give of the hearing?
Published notice on June 17th and 21st in the Charleston Newspapers; The Charleston Daily Mail and The Charleston Gazette. Sent Public Hearing Notice via e-mail to an extensive Division of Air Quality mailing list and posted on the Department of Environmental Protection's web site under "Calendar of Events".
- c. Date of Public Hearing(s) *or* Public Comment Period ended:
July 18, 2005
- d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.
Attached X No comments received _____

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

July 29, 2005

- 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

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- 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 II
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:

This rule establishes and adopts national emission standards for hazardous air pollutants (NESHAP) and other regulatory requirements promulgated by the United States Environmental Protection Agency (U.S. EPA) 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 rule incorporates by reference the NESHAP standards of 40 CFR Parts 61 and 65 (Consolidated Federal Air Rule), to the extent referenced in 40 CFR Part 61, promulgated as of June 1, 2005. The rule also adopts associated appendices, reference methods, performance specifications and other test methods which are appended to these standards and contained in 40 CFR Parts 61 and 65. Any person who constructs, reconstructs, modifies or operates any source subject to the provisions of 40 CFR Part 61 must comply with the applicable NESHAPS and this rule.

45CSR15, in conjunction with 45CSR34, establishes general provisions for emission standards for hazardous air pollutants (NESHAP) and other regulatory requirements promulgated by USEPA pursuant to section 112 of the federal Clean Air Act, as amended. 45CSR34 incorporates hazardous air pollutant standards codified by USEPA under 40 CFR Part 63 whereas 45CSR15, incorporates hazardous air pollutant standards promulgated by USEPA under 40 CFR Part 61.

This revised rule incorporates by reference the following new or revised NESHAP standards promulgated as of June 1, 2005: National Emission Standards for Hazardous Air Pollutants for Asbestos.

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:

As set forth in 40 CFR §61.04(b), Section 112(d) of the CAA directs the U.S. EPA Administrator to delegate to each State the authority to implement and enforce national

emission standards for hazardous air pollutants for stationary sources. Promulgation of this rule will enable the Department of Environmental Protection, Division of Air Quality (DAQ) to continue to be the primary enforcement authority for NESHAP promulgated under 40 CFR Part 61 by U.S. EPA as of June 1, 2005. Promulgation of this rule by the Legislature is necessary for the State to fulfill its responsibilities under the CAA, as amended. Revisions to the rule include annual incorporation by reference updates and general language clarification.

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

A federal counterpart to this proposed rule exists. In accordance with the Secretary's recommendation, and with limited exception, the Division 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 W.Va. Code §§22-1A-1 and 3(c), the Secretary 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 its June 8, 2005 meeting, the Environmental Protection Advisory Council reviewed and discussed this proposed rule. The Council's comments are contained in the attached minutes.

West Virginia Department of Environmental Protection

ADVISORY COUNCIL MEETING MINUTES

Wednesday - June 8, 2005

601 57th Street, SE, Charleston, WV
Dolly Sods Conference Room – 1st Floor

ATTENDEES:

Advisory Council Members:

Larry Harris
Jackie Hallinan
Rick Roberts
Lisa Dooley
Bill Raney
Karen Price

DEP:

Stephanie R. Timmermeyer, Cabinet Secretary
Karen G. Watson, Assistant General Counsel
Ken Ellison, Director - Division of Land Restoration
Lisa McClung, Director – Division of Water and Waste Management
John Benedict, Director – Division of Air Quality
Mike Zeto, WVDEP
Charlie Sturey, WVDEP
Jessica Greathouse, Chief Communication Officer – WVDEP – Public Information Office
James Martin, Chief, WVDEP - Office of Oil & Gas
Brett Loflin, WV Oil and Gas Conservation Commission
Dave Bassage- WVDEP
Greg Adolpson – WVDEP
Jim Mason – WVDEP
Fred Durham – WVDEP
Jim Mason – WVDEP
Mike Johnson – WVDEP

VISITORS:

Linda Tennant, Spilman, Thomas, Battle
Don Garvin – WVEC
Bob Asplund - Dominion

Karen Watson, WVDEP – Assistant General Counsel, called the meeting to order at 10:00 a.m.

Proposed rules for the 2006 legislative session are as follows:

- **45CSR1 “Control and Reduction of Nitrogen Oxides from Non-Electric Generating Units as a Means to Mitigate Transport of Ozone Precursors”**

This rule partially fulfills the State’s obligations in response to U.S. EPA’s final rule, *Findings of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group region for Purposes of Reducing Regional Transport of Ozone* 27 Oct 1998, herein referred to as the *NO_x SIP Call*). Essentially, the federal rule requires that large emitters of Nitrogen Oxides (NO_x) significantly reduce emissions and constrains them to set budgets, starting in 2004 and maintaining them thereafter. Flexibility is built in through market-based “cap and trade” provisions which allow sources to buy/sell NO_x emission allowances from /to other program participants. For example, a source which has emitted NO_x in excess of its NO_x allowance allocation may purchase NO_x allowances under the federal NO_x Budget Trading Program to obtain the needed NO_x emission allowances to cover its actual NO_x emissions during an ozone season. Conversely, a source which emits fewer tons of NO_x than its NO_x allowance allocation may either bank or sell (trade) the excess NO_x allowances to another sources which needs them to cover its excess NO_x emissions.

45CSR1 applies to large fossil fuel-fired stationary sources (large industrial boilers) with heat inputs greater than 250 mmBtu/hr. The Department of Environmental Protection, Division of Air Quality (DAQ) addresses Electric Generation Units (EGUs) in a separate rulemaking, 45CSR26. 45CSR1 also applies to large cement kilns and internal combustion engines which emitted more than one ton per day of NO_x from May 1 through September 30, 1995, although these sources are not subject to the NO_x Budget Trading Program.

Comments:

How will this relate to the new rule 40?

Rule 40 will repeal Rule 1 in 2009.

Are these kinds of trading effective in lowering NO_x emission?

Yes, West Virginia has dropped from one of the highest to one of the lowest states.

If one is testing, how do you see which sources account for improvement?

Have CEMS on stacks so we can analyze data.

- **45CSR15 – “Emission Standards for Hazardous Air Pollutants Pursuant to 40CFR Part 61”**

This rule establishes and adopts national emission standards for hazardous air pollutant (NESHAP) and other regulatory requirements promulgated by the United States Environmental Protection Agency (USEPA) pursuant to 40CFR 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 to the eight substances listed as hazardous air pollutants in 40 CFR §61.01(a). The rule incorporated by reference the NESHAP standards of 40 CFR Parts 61 and 65 (consolidated Federal Air Rule), to the extent referenced in 40CFR part 61, promulgated as of June 1, 2005. The rule also adopts associated appendices, reference methods, performance specifications and other test methods which are appended to these standards and contained in 40 CSR parts 61 and 65. Any person who constructs, reconstructs, modifies or operates any source subject to the provisions of 40 CFR Part 61 must comply with the applicable NESHAPS and this rule.

45CSR15, in conjunction with 45CSR34, establishes general provisions for emission standards for hazardous air pollutants (NESHAP) and other regulatory requirements promulgated by USEPA pursuant to section 112 of the federal Clean Air Act, as amended. 45CSR34 incorporates hazardous air pollutant standards codified by USEPA under 40CFR part 63 whereas 45CSR15, incorporates hazardous air pollutant standards promulgated by USEPA under 40 CFR Part 61.

This revised rule incorporates by reference the following new or revised NESHAP standards promulgated as of June 1, 2005: National Emission Standards for Hazardous Air Pollutants for Asbestos.

No Comments

- **45CSR16 – “Standards of Performance for New Stationary Sources Pursuant to 40CFR Part 60”**

This rule establishes and adopts national standards of performance for new stationary sources and other regulatory requirements promulgated by the United States Environmental Protection Agency (USEPA) pursuant to section 111(b) of the federal Clean Air Act, as amended (CAA). This rule codifies general procedures and criteria to implement standards of performance for new stationary sources set forth in 40 CFR Part 60. The rule incorporates by reference New Sources Performance Standards (NSPS) promulgated as of June 1, 2005. The rule also adopts associated appendices, reference methods, performance specifications and other test methods which are appended to such standards. Any person who constructs, modifies, reconstructs or operates an affected facility after the effective date of any NSPS under 40 CFR Part 60 must comply with the applicable NSPS and this rule.

This revised rule incorporates by reference the following new or revised NSPS standards promulgated as of July 1, 2005: Standards of performance for Industrial-Commercial-Institutional Steam Generating units; Stationary Gas Turbines: Steel Plants; and new and Existing Stationary Sources: Electric Utility Steam Generating Units (CAMR).

No Comments

- **45CSR25 – “To Prevent and Control Air Pollution from Hazardous Waste Treatment Storage or Disposal Facilities.”**

This rule establishes and adopts national standards of performance for new stationary sources and other regulatory requirements promulgated by the United States Environmental Protection Agency (USEPA) pursuant to the Resource Conservation and Recovery Act, as amended (RCRA). This rule codifies general procedures and criteria to implement emission standards set forth in the Code of Federal Regulations as listed in Table 25-A of the rule. The rule also adopts associated appendices, reference methods, performance specifications and other test methods, which are appended to these standards. Any person, who constructs, reconstructs, modifies or operates any hazardous waste treatment, storage, or disposal facility must comply with the West Virginia Hazardous Waste management Program, the codified federal emission standards, and this rule.

45CSR25 establishes a program of regulation over the treatment, storage, and disposal of hazardous wastes in order to achieve and maintain such levels of air quality as will protect the public health and safety and the environment from the effects of improper, inadequate, or unsound treatment, storage, or disposal of hazardous wastes.

This revised rule incorporates by reference the following provisions of 40 CFR Part 262 promulgated as of June 1, 2005: National Environmental Performance Track Program.

Comments:

What does the term “constituents” mean and how does one decide whether a source has prevented emissions that would cause harm under section 1.1.b of the rule?

Look at the definition of “hazardous waste” and prevention language is meant to set forth overall purpose of the rule.

Does the agency consult with DHHR or other public health officials?

No, the agency uses a risk-based approach and has a toxicologist employed. It also looks to EPA.

- **45CSR33 – “Acid Rain Provisions and Permits”**

This rule establishes and adopts the general provisions and operating permit program requirements for affected sources under the Acid Rain Program promulgated by the United States Environmental Protection Agency (USEPA) under title IV of the Clean Air Act, as amended (CAA). The rule also adopts associated appendices, reference methods, performance specifications and other test methods which are appended to these provisions.

Under the Acid Rain Program and 45CSR33, no person may construct, modify, or operate or cause to be constructed, modified, or operated, an Acid Rain Source in violation of 40CFR Parts 72 through 77.

Title IV of the CAA requires each state to implement an operating permit system conforming to Title IV and Title V of the CAA, as amended. 45CSR33 incorporates by reference the federal counterpart regulation 40 CFR Parts 72 through 77. USEPA approved West Virginia's Acid Rain Program with its approval of the state's Title V Operating Permit Program on December 15, 1995.

This revised rule incorporates by reference the following revisions to 40CFR Parts 72 through 77 promulgated as of June 1, 2005: Permits Regulation, Sulfur Dioxide Allowance System, Sulfur Dioxide Opt-Ins, continuous Emission Monitoring, Excess Emissions (CAIR & CAMR).

No Comments

- **45CSR34 – “Emission Standards for Hazardous Air Pollutants For Source Categories Pursuant to 40 CFR Part 63**

This rule establishes and adopts national emission standards for hazardous air pollutants (NESHAP) and other regulatory requirements promulgated by the United States Environmental Protection Agency (U.S. EPA) pursuant to 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 hazardous air pollutants set forth in section 112(b) of the CAA. The rule incorporates by reference the NESHAP standards of 40 CFR Parts 63 and 65 (Consolidated Federal Air Rule), to the extent referenced in 40 CFR Part 63, promulgated as of June 1, 2005. The rule also adopts associated appendices, reference methods, performance specifications and other test methods which are appended to these standards and contained in 40 CFR Parts 63 and 65. Any person who constructs, reconstructs, modifies or operates any source subject to the provisions of 40 CFR Part 63 must comply with the applicable NESHAPS and this rule.

45CSR34, in conjunction with 45CSR15, establishes general provisions for emission standards for hazardous air pollutants and other regulatory requirements promulgated by U.S. EPA pursuant to section 112 of the federal Clean Air Act, as amended. 45CSR34 incorporates hazardous air pollutant standards codified by U.S. EPA under 40 CFR Part 63 whereas 45CSR15 incorporates hazardous air pollutant standards promulgated by U.S. EPA under 40 CFR Part 61.

This revised rule incorporates by reference the following new or revised NESHAP standards promulgated as of June 1, 2005: National Environmental Performance Track Program, National Emission Standards for Hazardous Air Pollutants for Source Categories, Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks, Plywood & Composite Wood Products; Effluent Limitations Guidelines and Standards for Timber Products Point Source Category; List of HAPs, Lesser Quantity Designations, Source Category List, Printing, Coating & Dyeing of Fabrics and Other

Textiles, Stationary Combustion Turbines, Solvent Extraction for Vegetable Oil Production, Industrial, Commercial, Institutional Boilers and Process Heaters, Secondary Aluminum Production, Coke Ovens: Pushing, Quenching, and Battery Stacks, List of Hazardous Air Pollutants, Petition Process, Lesser Quantity Designations, Source Category List; Petition to Delist of Ethylene Glycol Monobutyl Ether, Organic Hazardous Air Pollutants from Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipments Leaks, Coke Ovens: Pushing, Quenching, and Battery Stacks, Leather Finishing Operations, Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units, Revision of December 2000 Regulatory Finding on the Emissions of HAPs from Electric Utility Steam Generating Units & Removal of Coal- and Oil-Fired Electric Utility Steam Generating Units from Section 112(c) List, Generic MACT; Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations, Coke Oven Batteries, Miscellaneous Coating Manufacturing, Pharmaceuticals Production, Asphalt Processing & Asphalt Roofing Manufacturing and Iron and Steel Foundries.

No Comments

- **45CSR37 – “Mercury Budget Trading Program to Reduce Mercury Emissions”**

This rule establishes the general provisions and designated representative, permitting, allowance and monitoring provisions for the Mercury (Hg) Budget Trading Program, as a means of reducing national mercury emissions, pursuant to the federal Clean Air Mercury Rule (CAMR) established under Section 111 of the Clean Air Act (CAA) and 40 CFR 60, Subpart HHHH.

This rule partially fulfills the State’s obligations in response to the United States Environmental Protection Agency’s (U.S. EPA) final rule, *Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units* (15 March 2005, at FR XXXXX). The federal rule establishes standards of performance for mercury (Hg) for new and existing coal-fired electric utility steam generating units (utility units). This rule establishes a mechanism by which Hg emissions from new and existing coal-fired utility units are capped at specific nation-wide levels. U.S. EPA has specified that annual Hg emission reductions be implemented in two phases. The first phase of Hg reductions starts in 2010 and the second phase begins in 2018, and continues thereafter. Flexibility is built in through market-based “cap and trade” provisions which allow sources to buy or sell Hg emission allowances from or to other program participants.

45CSR37 applies to coal-fired electric utility steam generating units that have greater than 25 MW_e generating capacity.

Comments:

How will this affect Industrial boilers?

The rule does not cover these sources.

What kind of monitoring is required?

Have to install CEMS.

What happens when there is litigation?

If court remands, we would withdraw the rule.

Does the rule apply to natural gas-fired units?

No, only coal-fired.

Does the rule establish new fees?

No.

John Benedict informed the Council of the following reductions:

Nationally

2010 – 22%

2018 – 69%

WV:

2010 – 43%

2018 – 77%

- **45CSR39 – “Control of Annual Nitrogen Oxide Emissions to Mitigate Interstate Transport of Fine Particulate Matter and Nitrogen Oxides”**

This rule establishes general provisions and the designated representative, permitting, allowance, monitoring, and opt-in provisions for the state CAIR NO_x Annual Trading Program pursuant to the federal Clean Air Interstate Rule (CAIR) under Section 110 of the Clean Air Act (CAA), 40 CFR Part 96, Subparts AA through II, and 40 CFR §51.123 for state implementation plans as a means of mitigating interstate transport of fine particulates and nitrogen oxides (NO_x).

This rule partially fulfills the State’s obligations in response to the United States Environmental Protection Agency’s (U.S. EPA) final rule, *Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to*

Acid Rain Program; Revisions to the NO_x SIP Call (12 May 2005, at FR 25162). The federal rule requires that large emitters of NO_x reduce annual emissions through the constraint of set budgets. U.S. EPA is specifying that annual NO_x emission reductions be implemented in two phases. The first phase of NO_x reductions starts in 2009; the second phase starts in 2015, and continues thereafter. The NO_x emission reduction requirements are based on controls that are known to be highly cost effective for electric generating units. Flexibility is built in through market-based “cap and trade” provisions which allow sources to buy or sell NO_x emission allowances from or to other program participants. Reducing upwind NO_x emissions will assist downwind PM_{2.5} and 8-hour ozone nonattainment areas in achieving the National Ambient Air Quality Standards (NAAQS).

45CSR39 applies to large fossil fuel-fired electric generating units that have greater than 25 MW_e generating capacity. The CAIR NO_x Ozone Season Trading Program requirements are set forth in 45CSR40.

Comments:

How will this affect industrial boilers?

It will not. It only affects electric utilities.

Is there a set-aside provision?

Yes.

Agency should consider using the money to clean up streams impacted by acid rain.

- **45CSR40 – “Control of Ozone Season Nitrogen Oxide Emissions to Mitigate Interstate Transport of Ozone and Nitrogen Oxides”**

This rule establishes the general provisions and the designated representative, permitting, allowance, monitoring, and opt-in provisions for the state CAIR NO_x Ozone Season Trading Program pursuant to the federal Clean Air Interstate Rule (CAIR) under Section 110 of the Clean Air Act (CAA), 40 CFR Part 96, Subparts AAAA through IIII, and 40 CFR §51.123 for state implementation plans as a means of mitigating interstate transport of ozone and nitrogen oxides (NO_x).

This rule partially fulfills the State’s obligations in response to the United States Environmental Protection Agency’s (U.S. EPA) final rule, *Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_x SIP Call* (12 May 2005, at FR 25162). The federal rule requires that large emitters of NO_x reduce ozone season emissions through the constraint of set budgets. U.S. EPA is specifying that ozone season NO_x emission reductions be implemented in two phases. The first phase of ozone season NO_x reductions starts in 2009; the second phase starts in 2015, and continues thereafter. The NO_x emission

reduction requirements are based on controls that are known to be highly cost effective for electric generating units and large industrial boilers. Flexibility is built in through market-based “cap and trade” provisions which allow sources to buy or sell NO_x emission allowances from or to other program participants. Reducing upwind ozone season NO_x emissions will assist downwind 8-hour ozone nonattainment areas in achieving the National Ambient Air Quality Standards (NAAQS).

Because CAIR subsumes the ozone season NO_x SIP Call trading program, existing NO_x SIP Call rules 45CSR1 and 45CSR26 and their ozone season NO_x reduction provisions must be “sunsetting” by January 1, 2009. Therefore, 45CSR40 contains a repeal clause which effectively “sunsets” these rules, meeting the approvability requirement for implementing CAIR.

45CSR40 applies to large fossil fuel-fired electric generating units that have greater than 25 MW_e generating capacity and large fossil fuel-fired industrial boilers with a heat input greater than 250 mmBtu/hr. This rule also applies to affected cement kilns and internal combustion engines, by retaining the NO_x SIP Call ozone season NO_x emission reduction requirements for these sources from 45CSR1. These existing requirements do not provide for inclusion in any cap and trade program for cement kilns and internal combustion engines. The CAIR NO_x Annual Trading Program requirements are set forth in 45CSR39.

No Comments.

- **33CSR41 – “Control of Annual Sulfur Dioxide Emissions to Mitigate Interstate Transport of Fine Particulate Matter and Sulfur Dioxide”**

This rule establishes general provisions and the designated representative, permitting, allowance, monitoring, and opt-in provisions for the state CAIR SO₂ Trading Program pursuant to the federal Clean Air Interstate Rule (CAIR) under Section 110 of the Clean Air Act (CAA), 40 CFR Part 96, Subparts AAA through III, and 40 CFR §51.124 for state implementation plans as a means of mitigating interstate transport of fine particulates and sulfur dioxide (SO₂).

This rule partially fulfills the State’s obligations in response to the United States Environmental Protection Agency’s (U.S. EPA) final rule, *Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_x SIP Call* (12 May 2005, at FR 25162). The federal rule requires that large emitters of SO₂ reduce annual emissions based upon the implementation of retirement ratios for SO₂ allowances allocated under the Acid Rain Program. U.S. EPA is specifying that annual SO₂ emission reductions be implemented in two phases. The first phase of SO₂ reductions starts in 2010 and requires retiring SO₂ allowances at a 2:1 ratio; the second phase starts in 2015 and requires retiring SO₂ allowances at a 2.86:1 ratio, and continues thereafter. The SO₂ emissions reductions requirements are based on controls that are known to be highly cost effective for electric generating units. Flexibility is built in through market-based “cap and trade” provisions

which allow sources to buy or sell SO₂ emission allowances from or to other program participants. Reducing upwind SO₂ emissions will assist downwind PM_{2.5} and 8-hour ozone nonattainment areas in achieving the National Ambient Air Quality Standards (NAAQS).

45CSR41 applies to large fossil fuel-fired electric generating units that have greater than 25 MW_e generating capacity.

How was the fiscal note derived?

It is based on how many persons will be necessary to implement the rule.

When will these rules be filed with EPA?

September of 2006 for the CAIR rules and November 2006 for the mercury rule.

- **33CSR1 – “Solid Waste Management Rule”**

This legislative rule establishes requirements for the siting (including location standards), financial assurance, installation, establishment, construction, design, groundwater monitoring, modification, operation, permitting, closure and post-closure care of any solid waste facility that processes, recycles, composts, transfers or disposes of solid waste pursuant to W. Va. Code §22-15-1 et seq. The rule revision will clarify that the State Division of Highways is subject to an exemption from permitting for its construction/demolition wastes associated with highway construction. The rule will also clarify that the beneficial reuse of clean bituminous concrete (asphalt) is not subject to permitting requirements, just as the beneficial reuse of Portland cement is not subject to permitting.

Comments:

Has the agency worked with the Division of Highways on the rule?

Yes.

- **33-CSR20 – “Hazardous Waste Management”**

The purpose of this rule is to provide for the regulation of the generation, treatment, storage, and disposal of hazardous waste to the extent necessary for the protection of the public health and safety and the environment. The rule changes pick up two new federal regulations.

No Comments.

- **35CSR3 – “Coalbed Methane Wells Rule”**

This rule applies to coalbed methane wells. The rule changes are necessary to conform to recent statutory revisions related to spacing. The changes also address new technology allowing for the horizontal drilling of wells.

Comments:

Are operators required to sample both water quality and quantity?

Just quality.

A question was raised about the 100' and 1000' distance requirements from water wells and the agency explained how these provisions work.

A comment was made that landowners are confused by the rule's requirements and some further explanations would be helpful.

- **39CSR1 – “Rules of the Commission”**

The rule is designed to prevent waste, protect correlative rights and to conserve oil and gas in the State of West Virginia and is applicable to all activities subject to the jurisdiction of the Oil and Gas Conservation Commission. Where special field rules apply, the special field rules shall govern to the extent of any conflict. The rule changes are to clarify the agency can enter consent agreements and establish escrow accounts.

No comments.

- **60CSR8 “Environmental Excellence Program Rule”**

This legislative rule establishes the eligibility, procedures, standards and legal documents required for establishing a voluntary environmental excellence program, consisting of incentives to reward facilities that go beyond regulatory requirements.

Comments:

Will the reports that are filed be shared with the public?

Yes, they will be posted on the internet.

Will people pay the \$1000 fee?

From pre-comments, most are willing to pay some amount. The administrative fund will cover the agency's operating costs.

A comment was made that there should be more programs like this, where companies are rewarded for good performance.

Lisa McClung, Director of DWWM, presented several rules under the water program that will be filed in the future. One was the concentrated animal feeding operation (CAFO) rule that was withdrawn by the agency in

the 2005 session. As soon as EPA repromulgates its rule, the State will need to do so, perhaps by an emergency rule.

Then the new law transferring the authority to adopt water quality standards to the DEP was discussed. A question was raised concerning the public's involvement in the process. Ms. McClung responded that the process would be somewhat different from the agency's normal rulemaking.

Karen Watson then presented a list of bills passed by the Legislature during the 2005 regular session and signed by the Governor as follows:

1. SB 428. Creating the Revitalization Environmental Action Plan.

This legislation transfers the litter control and recycling programs from DNR to DEP and transfers the waste tire remediation program from DOH to DEP. The legislation was amended by the House to require the excess funds to be transferred to the state road fund rather than the solid waste reclamation and environmental response fund. SB 428 bill also incorporates the provisions of Senate Bill 42 at 22-15A-12(f) and (k). These provisions provide liability protection on waste tire remediation to bona fide purchasers of property containing waste tires.

2. SB 603. Higher Education Bill – Brownfield Assistance Centers.

This legislation creates a provision in W.Va. Code § 18B11-7 that authorizes Marshall University and West Virginia University to each create Brownfield Assistance Centers for the purpose of acquiring and developing property; seeking federal brownfield assistance funds; and providing assistance to municipalities and local governments for brownfields development.

Comments:

The Council discussed the funding mechanisms under the new law.

3. HB 3354. Oil and Gas Permit Fee Increase.

This legislation increases the permit fees for shallow wells from \$250 to \$400; the permit fees for deep wells from \$250 to \$650; and the reclamation fees for all well activity from \$100 to \$150. This legislation also includes some technical amendments to the statutes governing oil and gas and coal bed methane drilling and production. As introduced, the legislation increased the permit fees for coal bed methane wells from \$250 to \$650 but the legislation was amended by the Senate to eliminate this permit fee increase. In total, this legislation will generate approximately \$350,000 for the Office of Oil and Gas.

4. SB 406. Uniform Environmental Covenant Act.

This legislation clarifies that environmental covenants containing affirmative obligations issued pursuant to the Voluntary Remediation and Redevelopment Act or other federal or state response actions are enforceable and perpetual; provides notice requirements for those placing environmental covenants on

real property; and authorizes the department and local governments to enforce environmental covenants.

Comments:

A question was raised as to local governments.

The agency responded that they are included and have authority under the new law.

5. HB 2723. Environmental Rules Bundle.

This legislation consolidates the rules proposed by DEP and EQB. The DEP rules include revisions to the air, waste, water and mining programs. The EQB's rule relates to water quality standards. The EQB's rule was amended to eliminate Fill Hollow Creek in Preston County that the Board recommended to be included on the Tier 2.5 list. Tier 2.5 waters are waters of special concern and include naturally reproducing trout streams.

6. HB 3236. Thin Seam Coal Tax Applicability.

This legislation clarifies that the special tax on coal production and the special reclamation tax apply to coal produced from thin seams.

7. HB 2333. Environmental Good Samaritan Act.

This legislation protect landowners, groups and individuals who volunteer to reclaim abandoned mineral extraction lands and abate water pollution caused by abandoned mine lands from civil and environmental liability provided such activities are approved by the department and implemented in accordance with the plans approved by the department.

8. HB 3033. Continuation of Special Reclamation Tax.

This legislation extends the temporary special reclamation tax of seven cents for an additional eighteen months thereby maintaining the total special reclamation tax at fourteen cents per ton of coal produced. The legislation also requires the Secretary to evaluate and consider additional bonding mechanisms, such as full cost bonding and the creation of a water quality trust fund.

9. SB 154. Beneficial Reuse of Water Treatment Plant Sludge.

This legislation authorizes the beneficial reuse of water treatment plant sludge and requires the department to develop rules establishing criteria for the beneficial reuse of water treatment plant sludge.

10. SB 287. Transfer of Rulemaking Authority for Water Quality Standards.

This legislation transfers the authority to promulgate water quality standards and the authority to grant reming variances from the Environmental Quality Board to the department.

11. SB 748. Credit for Mitigation.

This legislation authorizes the secretary to grant credit for mitigation required by the Corps of Engineers pursuant to permit issued under Section 404 of the Clean Water Act when such mitigation satisfies mitigation required by the West Virginia Water Pollution Control Act.

12. SB 700. Creation of the Community Infrastructure Investment Program.

This legislation authorizes department to grant approval for the construction of privately financed water and sewage treatment facilities without the requirement of a certificate of need and convenience from the Public Service Commission provided that the project results in economic development and improvement of water quality. This legislation also authorizes municipal utilities and public service districts to enter into community service agreements with private developers for the purpose of constructing or expanding public utilities. This legislation also requires the secretary to promulgate emergency rules to implement the program.

Comments:

Two members expressed interest in the future rulemaking efforts and any stakeholders group.

13. HB 3356. Increasing authority of the Solid Waste Management.

This legislation requires the SWMB to conduct biannual performance reviews of county and regional solid waste authorities and grants the SWMB with the authority to supersede or exercise the powers granted to county or regional solid waste authorities that operate a solid waste facility

14. SB 455. Financing of Environmental Control Activities.

This Legislation authorizes the public service commission to review and approve the use of environmental control bonds for environmental control activities by certain qualified electric utilities.

The next meeting date was scheduled for September 15, 2005 – 1:00 p.m. – 3:00 p.m. – Trish will contact everyone with room location and agenda.

Karen Watson adjourned meeting.

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: 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.

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

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	2006 Increase/Decrease (use "-")	2007 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.

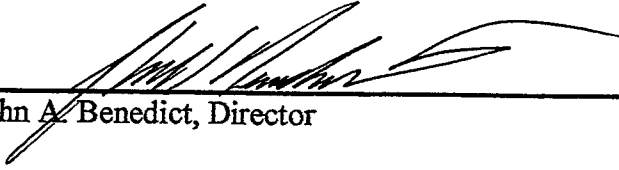
Costs anticipated to be incurred in the implementation of federal rules promulgated under 40 CFR Part 61 as of June 1, 2005 are included in prior cost estimates prepared for state implementation of Title V of the Clean Air Act, as amended, under 45CSR30. Full Title V program approval was issued by the U.S. Environmental Protection Agency on November 19, 2001.

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.

Date: June 15, 2005

Signature of Agency Head or Authorized Representative:



John A. Benedict, Director

FILED

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

2005 JUL 29 P 2:30
OFFICE WEST VIRGINIA
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. -- ~~May 20, 2005.~~

1.4. Effective Date. -- ~~June 1, 2005.~~

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 ~~July 1, 2004, 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 ~~April 30, 2004~~ May 20, 2005,

and which became effective ~~June 1, 2004~~ 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 such 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, ~~shall will~~ have the meaning ascribed to them in 40 CFR Part 61. Words and phrases not defined therein ~~shall 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 ~~July 1, 2004~~, 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., ~~W.Va. Code~~ 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 ~~shall~~ 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 ~~shall~~ will retain authority and not transfer ~~such~~ authority to the ~~State~~ 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 ~~shall~~ must be construed or inferred to mean that permit requirements in accordance with applicable rules ~~shall~~ 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, ~~such~~ the inconsistency ~~shall~~ will be resolved by the determination of the Secretary and ~~such~~ the determination ~~shall~~ will be based upon the application of the more stringent provision, term, condition, method or rule.

National Technology Transfer Advancement Act

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Congressional Review Act

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 20, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Volatile organic compounds, Ozone.

Dated: July 8, 2004.

Norman Niedergang,
Acting Regional Administrator, Region 5.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart KK—Ohio

■ 2. Section 52.1885 is amended by adding paragraph (b)(12) to read as follows:

§ 52.1885 Control strategy: Ozone.

* * * * *

(b) * * *

(12) Approval—On April 19, 2004, Ohio submitted a revision to the ozone maintenance plan for the Cincinnati, Ohio area. The revision consists of allocating a portion of the area's NO_x safety margin to the transportation conformity motor vehicle emissions budget. The motor vehicle emissions budget for NO_x for the Cincinnati, Ohio area is now 62.7 tons per day for the year 2010. This approval only changes the NO_x transportation conformity emission budget for Cincinnati, Ohio.

* * * * *

[FR Doc. 04-16333 Filed 7-19-04; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[OAR-2002-0082; FRL 7789-5]

National Emission Standards for Hazardous Air Pollutants for Asbestos

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; amendments.

SUMMARY: On September 18, 2003 (68 FR 54790), EPA issued amendments to the national emission standards for hazardous air pollutants (NESHAP) for asbestos under section 112 of the Clean Air Act (CAA). This action corrects typographical errors in Table 1 to the amendments that were promulgated on September 18, 2003.

Section 553 of the Administrative Procedure Act (APA), 5 U.S.C.

553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making this action final without prior proposal and opportunity for comment because the corrections to the final rule do not change the requirements of the final rule. They are minor technical corrections and are not controversial. Thus, notice and public procedure are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(B) (see also the final sentence of section 307(d)(1) of the Clean Air Act (CAA), 42 U.S.C. 7607(d)(1), indicating that the good cause provisions of the APA continue to apply to this type of rulemaking under the CAA).

DATES: The final rule is effective on August 19, 2004.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. OAR 2002-0082. All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, *i.e.*, confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the EPA Air Docket. This Docket Facility is open from 8:30 a.m. to 4:30 p.m. e.s.t., Monday through Friday, excluding legal holidays. The EPA Air Docket is located at the EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the EPA Air Docket is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Fairchild, U.S. EPA, Minerals and Inorganic Chemicals Group (C-504-05), Emission Standards Division, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5167, facsimile number (919) 541-5600, electronic mail address: fairchild.susan@epa.gov.

SUPPLEMENTARY INFORMATION: Regulated Entities: Entities potentially regulated by this action include:

Category	NAICS	Examples of regulated entities
Industrial	23	Construction.
Industrial	23594	Wrecking and Demolition Contractors.
Industrial	562112	Hazardous Waste Collection.
Industrial	562211	Hazardous Waste Treatment and Disposal.
Industrial	5629	Remediation and Other Waste Management Services.
Industrial	56191	Packaging and Labeling Services.
Industrial	332992	Small Arms Ammunition Manufacturing.
Industrial	33634	Motor Vehicle Systems Manufacturing.
Industrial	327	Nonmetallic Mineral Product Manufacturing.
Industrial	3279	Other Nonmetallic Mineral Product Manufacturing.
Industrial	32791	Abrasive Product Manufacturing.
Industrial	32799	All Other Nonmetallic Mineral Product Manufacturing.

World wide Web (WWW). In addition to being available in the docket, an electronic copy of this action will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of this action will be posted on EPA's TTN policy and guidance page for newly proposed or promulgated rules: <http://www.epa.gov/ttn/oarpg>. The TTN at EPA's web site provides information and technology exchange in various areas of air pollution control.

I. Background

On November 20, 1990, the **Federal Register** published EPA's revision of the National Emission Standards for Hazardous Air Pollutants for Asbestos (asbestos NESHAP), 40 CFR part 61,

subpart M, (55 FR 48406). That rule contained regulatory provisions for the labeling of asbestos waste that cited to regulations then in place from the Occupational Safety and Health Administration (OSHA) for proper labeling of asbestos waste. Subsequent to the publication of that rule, OSHA renumbered the provisions cited in the asbestos NESHAP.

On September 18, 2003, the **Federal Register** published EPA's amendments to the National Emission Standards for Hazardous Air Pollutants for Asbestos (asbestos NESHAP), 40 CFR part 61, subpart M, (55 FR 48406). Those amendments correctly identify the current OSHA regulatory citations for properly labeling asbestos waste that is managed under the asbestos NESHAP.

However, typographical errors occurred in Table 1: Cross Reference to Other Asbestos Regulations in the **Federal Register** publication of that notice and today's final rule amendments correct the errors.

II. Final Rule Amendments to the Asbestos NESHAP

The current OSHA permissible exposure limit (PEL) is 0.1 fibers per cubic centimeter (f/cc). However, Table 1 found at 40 CFR 61.156 erroneously identifies the OSHA PEL as 0.2 f/cc. Today's action corrects Table 1 at 40 CFR 61.156, to reference the OSHA regulation but the NESHAP will not reference the current level of the PEL. Therefore, the section of Table 1 which is being corrected now reads as follows:

TABLE 1.—CROSS-REFERENCE TO OTHER ASBESTOS REGULATIONS

Agency	CFR citation	Comment
OSHA	29 CFR 1910.1001	Worker protection measures—engineering controls, worker training, labeling, respiratory protection, bagging of waste, permissible exposure level.
	29 CFR 1926.1101	Worker protection measures for all construction work involving asbestos, including demolition and renovation-work practices, worker training, bagging of waste, permissible exposure level.

We find for good cause under 5 U.S.C. 553(b)(B) that notice and comment procedures are unnecessary, and we are not soliciting comments on the amendments. The corrections are nonsubstantive in nature and do not affect the requirements for subject persons under the regulations. The regulations will continue to cite to the same OSHA regulations, and merely revise commentary statements accompanying the citations. In addition, the changes are noncontroversial and simply correct two typographical errors. Finally, the final rule amendments raise no new substantive issues beyond those raised in the previous direct final rule

and notice of proposed rulemaking published on September 18, 2003. The EPA received no adverse comments regarding those notices, so an additional period of public comment is unnecessary.

III. Statutory and Executive Order Reviews

Under Executive Order 12866, Regulatory Planning and Review (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is, therefore, not subject to review by the Office of Management and Budget. This action is not a "major rule" as defined by 5 U.S.C. 804(2). The final rule does

not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Because EPA has made a "good cause" finding that this action is not subject to notice and comment requirements under the APA or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of

the Unfunded Mandates Reform Act. The final rule does not have substantial direct effects on the States, or on the relationship between the national government and the States, as specified in Executive Order 13132, Federalism (64 FR 43255, August 10, 1999). Today's action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175, Consultation and Coordination with Indian Tribal Governments (65 FR 67249, November 6, 2000). Also, the final rule is not subject to Executive Order 13045, Protection of Children from Environmental Health and Safety Risks (62 FR 1985, April 23, 1997) because it is not economically significant. The final rule is not subject to Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866. The final rule does not involve changes to the technical standards related to test methods or monitoring methods; thus the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply. Also, the final rule

does not involve special consideration of environmental justice-related issues as required by Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994). The EPA has complied with Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings) (53 FR 8859, March 15, 1988) by examining the takings implications of the final rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive Order. In issuing the final rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988, Civil Justice Reform (61 FR 4729, February 7, 1996). The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a

copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing the final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. The final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 61

Environmental protection, Asbestos, Air pollution control, Hazardous substances.

Dated: July 13, 2004.

Robert Brenner,

Acting Assistant Administrator, Office of Air and Radiation.

■ For the reasons stated in the preamble, title 40, chapter I, part 61 is amended as follows:

■ 1. The authority citation for part 61 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 2. Section 61.156 is amended by revising Table 1 to read as follows:

§ 61.156 Cross-reference to other asbestos regulations.

* * * * *

TABLE 1.—CROSS-REFERENCE TO OTHER ASBESTOS REGULATIONS

Agency	CFR citation	Comment
EPA	40 CFR part 763, subpart E	Requires schools to inspect for asbestos and implement response actions and submit asbestos management plans to States. Specifies use of accredited inspectors, air sampling methods, and waste disposal procedures.
	40 CFR part 427	Effluent standards for asbestos manufacturing source categories.
	40 CFR part 763, subpart G	Protects public employees performing asbestos abatement work in States not covered by OSHA asbestos standard.
OSHA	29 CFR 1910.1001	Worker protection measures—engineering controls, worker training, labeling, respiratory protection, bagging of waste, permissible exposure level.
	29 CFR 1926.1101	Worker protection measures for all construction work involving asbestos, including demolition and renovation-work practices, worker training, bagging of waste, permissible exposure level.
MSHA	30 CFR part 56, subpart D	Specifies exposure limits, engineering controls, and respiratory protection measures for workers in surface mines.
	30 CFR part 57, subpart D	Specifies exposure limits, engineering controls, and respiratory protection measures for workers in underground mines.
DOT	49 CFR parts 171 and 172	Regulates the transportation of asbestos-containing waste material. Requires waste containment and shipping papers.

* * * * *
 [FR Doc. 04-16447 Filed 7-19-04; 8:45 am]
 BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 93

[FRL-7789-6]

RIN 2060-AL73

RIN 2060-AI56

Transportation Conformity Rule Amendments for the New 8-Hour Ozone and PM_{2.5} National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes; Correction to the Preamble

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: EPA issued a final rule on July 1, 2004 (69 FR 40004) that amended the transportation conformity rule to include criteria and procedures for the new 8-hour ozone and fine particulate matter (PM_{2.5}) national ambient air quality standards (NAAQS or "standards"). The final rule also

addressed a March 2, 1999 ruling by the U.S. Court of Appeals for the District of Columbia Circuit (*Environmental Defense Fund v. EPA, et al.*, 167 F. 3d 641, D.C. Cir. 1999). The preamble to the final rule contains two errors. This notice is intended to correct these errors. All other preamble and regulatory text printed in the July 1, 2004 final rule is correct.

The Department of Transportation (DOT) is EPA's federal partner in implementing the transportation conformity regulation. We have consulted with DOT on the development of these corrections, and DOT concurs.

DATES: *Effective Date:* August 2, 2004.

FOR FURTHER INFORMATION CONTACT: Meg Patulski, State Measures and Conformity Group, Transportation and Regional Programs Division, U.S. Environmental Protection Agency, 2000 Traverwood Road, Ann Arbor, MI 48105, patulski.meg@epa.gov, (734) 214-4842; Rudy Kapichak, State Measures and Conformity Group, Transportation and Regional Programs Division, U.S. Environmental Protection Agency, 2000 Traverwood Road, Ann Arbor, MI 48105, kapichak.rudolph@epa.gov, (734) 214-4574; or Laura Berry, State Measures and Conformity Group, Transportation and Regional Programs Division, U.S. Environmental Protection

Agency, 2000 Traverwood Road, Ann Arbor, MI 48105, berry.laura@epa.gov, (734) 214-4858.

SUPPLEMENTARY INFORMATION: EPA issued a final rule on July 1, 2004 (69 FR 40004) that amended the transportation conformity rule to include criteria and procedures for the new 8-hour ozone and fine particulate matter (PM_{2.5}) national ambient air quality standards (NAAQS or "standards"). The final rule also addressed a March 2, 1999 ruling by the U.S. Court of Appeals for the District of Columbia Circuit (*Environmental Defense Fund v. EPA, et al.*, 167 F. 3d 641, D.C. Cir. 1999). The preamble to the July 1, 2004 final rule contains two errors. This notice is intended to correct these errors.

First, the table in Section II. D. What Parts of the Final Rule Apply to Me? (69 FR 40006-7), which lists the issues addressed in the final rule, is incomplete and contains a number of incorrect references to other sections of the rule. The table provides a roadmap for determining whether a specific final rule revision included in the July 1, 2004 rulemaking would apply in your area. The table illustrates which parts of the final rule are relevant for various pollutants and standards.

The following is the corrected table:

Type of area	Issue addressed in final rule	Preamble section	Regulatory section
8-hour ozone	Conformity grace period	III.A	§ 93.102(d)
	Revocation of 1-hour ozone standard	III.B	Not applicable.
	General implementation of new standards	III.C	Not applicable.
	Early Action Compacts	III.D	Not applicable.
	Baseline year test	IV.B	§ 93.119(b)
	Build/no-build test (marginal classification and subpart 1 areas ¹).	IV.C	§ 93.119(b)(2), § 93.119(g)(2)
	Regional conformity tests (moderate and above classifications).	IV.D	§ 93.119(b)(1)
	Regional conformity tests (areas without 1-hour ozone budgets).	V	§ 93.109(d)
	Regional conformity tests (areas with 1-hour ozone budgets).	VI	§ 93.109(e)
	Federal projects during a lapse	XIV	§ 93.102(c), § 93.104(d)
	Adequacy process of submitted SIPs	XV	§ 93.118(e)
		XXIII.G	§ 93.118(f)
	Non-federal projects during a lapse	XVI	§ 93.121(a)
	Consequences of SIP disapprovals	XVII	§ 93.120(a)(2)
	Safety margins	XVIII	Deletes § 93.124(b) of previous rule.
	Frequency	XIX	§ 93.104(c), § 93.104(e)
	Latest planning assumptions	XX	§ 93.110(a)
	Relying on a previous analysis	XXII	§ 93.122(g), § 93.104(b), § 93.104(c)
	Definitions	XXIII.A	§ 93.101
	Insignificance	XXIII.B	§ 93.109(k), § 93.121(c)
	Transportation plan and modeling requirements (moderate and above classifications).	XXIII.D	§ 93.106(b), § 93.122(c)
	Non-federal projects (for isolated rural areas only).	XXIII.F	§ 93.121(b)(1)
	Implementation of budget test	XXIII.H	§ 93.118(b)
	XXIII.I	§ 93.118(d)	

¹ "Subpart 1 areas" are areas that are designated nonattainment under subpart 1 of part D of title 1

of the Clean Air Act. EPA also referred to these areas as "basic" nonattainment areas in its April 30,

2004 final designations rule for the 8-hour ozone standard (69 FR 23862).

WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF AIR QUALITY
CHARLESTON, WEST VIRGINIA

IN RE:

ACCEPT COMMENTS ON PROPOSED REVISIONS
TO EXISTING LEGISLATIVE RULE 45CSR15 -
EMISSION STANDARDS FOR HAZARDOUS AIR
POLLUTANTS; 45CSR16-STANDARDS OF
PERFORMANCE FOR NEW STATIONARY SOURCES;
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 FOR SOURCE CATEGORIES; 45CSR37 -
MERCURY BUDGET TRADING PROGRAM TO REDUCE
MERCURY EMISSIONS; 45CSR39 - CONTROL OF
ANNUAL NITROGEN OXIDE EMISSIONS TO MITIGATE
INTERSTATE TRANSPORT OF OZONE AND NITROGEN
OXIDES; 45CSR40 - CONTROL OF OZONE SEASON
NITROGEN OXIDE EMISSIONS TO MITIGATE
INTERSTATE TRANSPORT OF OZONE AND NITROGEN
OXIDES; AND 45CSR41 - CONTROL OF ANNUAL
SULFUR DIOXIDE EMISSIONS TO MITIGATE
INTERSTATE TRANSPORT OF FINE PARTICULATE
MATTER AND SULFUR DIOXIDE.

TRANSCRIPT OF PROCEEDINGS had and/or testimony adduced
in the public hearing regarding the above-referenced
matter, held on the 18th day of July, 2005, commencing at
6:00 p.m. and concluding at 6:35 p.m., at the West Virginia
Department of Environmental Protection, Cooper's Rock
Training Room, 601 57th Street, S.E., Charleston, Kanawha
County, West Virginia, with Jeanie Chandler, presiding.

NANCY MCNEALY
CERTIFIED COURT REPORTER

Post Office Box 13415
Charleston, West Virginia 25360-0415
(304) 988-2873 FAX (304) 988-1419

1 MS. CHANDLER: This public hearing will now come
2 to order on this 18th day of July, 2005, at the West
3 Virginia Department of Environmental Protection, Cooper's
4 Rock Training Room, 601 57th Street S.E., Charleston, West
5 Virginia. This public is being held to accept comments on
6 proposed revisions to existing legislative rule 45CSR15-
7 Emission Standards for Hazardous Air Pollutants pursuant to
8 40 CFR Part 61; 45CSR16 - Standards of Performance for New
9 Stationary Sources pursuant to to 40 CFR Part 60; 45CSR25 -
10 To Prevent and Control Air Pollution from Hazardous Waste
11 Treatment, Storage, or Disposal Facilities; 45CSR33; Acid
12 Rain Provisions and Permits; 45CSR34 - Emission Standards
13 for Hazardous Air Pollutants for Source Categories pursuant
14 to 40 CFR Part 63; 45CSR37 - Mercury Budget Trading Program
15 to Reduce Mercury Emissions; 45CSR39 - Control of Annual
16 Nitrogen Oxide Emissions to Mitigate Interstate Transport
17 of Ozone and Nitrogen Oxides; 45CSR40 - Control of Ozone
18 Season Nitrogen Oxide Emissions to Mitigate Interstate
19 Transport of Ozone and Nitrogen Oxides; and 45CSR41 -
20 Control of Annual Sulfur Dioxide Emissions to Mitigate
21 Interstate Transport of Fine Particulate Matter and Sulfur
22 Dioxide.

23 A notice for the hearing was filed in the
24 Secretary of State's office on June 15, 2005, and noticed

1 in the *State Register* on June 17, 2005. A class 1 legal
2 advertisement was published in both the *Charleston Daily*
3 *Mail* and *Charleston Gazette* on June 17, 2005, and the
4 notice was posted on the Division of Air Quality's web
5 site.

6 This public hearing is being held pursuant to the
7 provisions of 29A of the West Virginia Code. My name is
8 Jeanne Chandler with the Division of Air Quality,
9 Department of Environmental Protection. I will be the
10 moderator for the proceedings this evening.

11 Each rule will be considered separately this
12 evening. Comments and testimony will be accepted until the
13 close of this hearing and will be made part of the rule
14 making record.

15 The court reporter is Nancy McNealy. If anyone
16 desires a transcript of this proceeding, please contact Ms.
17 McNealy at 988-2873.

18 The purpose of this hearing is to accept comments
19 on proposed revisions to rule 45CSR15 - Emission Standards
20 for Hazardous Air Pollutants pursuant to 40 CFR Part 61.

21 This rule establishes and adopts national
22 emission standards for hazardous air pollutants (NESHAP)
23 and other regulatory requirements promulgated by the United
24 States Environmental Protection Agency (U.S. EPA) pursuant

1 to 40 CFR Part 61 and Section 112 of the federal Clean Air
2 Act, as amended (CAA). This rule codifies general
3 procedures and criteria to implement emission standards for
4 stationary sources that emit or have the potential to emit
5 one or more of the eight substances listed as hazardous air
6 pollutants in 40 CFR §61.01(a). The rule incorporates by
7 reference the NESHAP standards of 40 CFR Parts 61 and 65
8 (Consolidated Federal Air Rule), to the extent referenced
9 in 40 CFR Part 61, promulgated as of June 1, 2005. The
10 rule also adopts associated appendices, reference methods,
11 performance specifications and other test methods which are
12 appended to these standards and contained in 40 CFR parts
13 61 and 65. Any person who constructs, reconstructs,
14 modifies or operates any source subject to the provisions
15 of 40 CFR Part 61 must comply with the applicable NESHAPS
16 and this rule.

17 45CSR15, in conjunction with 40CSR34, establishes
18 general provisions for emission standards for hazardous air
19 pollutants (NESHAP) and other regulatory requirements
20 promulgated by U.S. Environmental Protection Agency
21 pursuant to Section 112 of the federal Clean Air Act, as
22 amended. 45CSR34 incorporates hazardous air pollutant
23 standards codified by U.S. Environmental Protection Agency
24 under 40 CFR Part 63; whereas, 45CSR15, incorporates

1 hazardous air pollutant standards promulgated by U.S.
2 Environmental Protection Agency under 40 CFR Part 61.

3 This revised rule incorporates by reference the
4 following or new or revised NESHAP standards promulgated as
5 of June 1, 2005: National Emission Standards for Hazardous
6 Air Pollutants for Asbestos.

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

10 (No response.)

11 There being nothing further, this public hearing
12 for the proposed 45CSR15 is concluded.

13 (WHEREUPON, the hearing was concluded.)

14

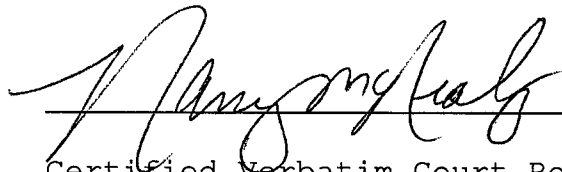
REPORTER'S CERTIFICATE

STATE OF WEST VIRGINIA,
DEPARTMENT OF ENVIRONMENTAL
PROTECTION, to wit:

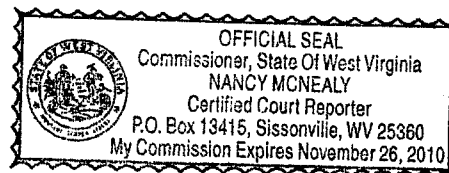
I, **NANCY MCNEALY**, Certified Verbatim Court Reporter and Commissioner of West Virginia, do hereby certify that the foregoing is, to the best of my skill and ability, a true and accurate transcript of all the proceedings as set forth in the caption hereof.

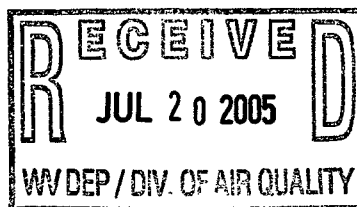
Given under my hand this 21st day of July, 2005.

My commission expires November 26, 2010.



Certified Verbatim Court Reporter





American Electric Power
1 Riverside Plaza
Columbus, OH 43215-2373
aep.com

July 18, 2005

Mr. John A. Benedict, Director
Division of Air Quality
West Virginia Department of Environmental Protection
601 57th Street SE
Charleston, West Virginia 25304

RE: AEP Comments on Proposed Division of Air Quality Rules

Dear Director Benedict:

Appalachian Power Company and Ohio Power Company, dba American Electric Power (AEP), are pleased to offer these comments on the Division of Air Quality's (DAQ) proposed rules 45 C.S.R. 15, 45 C.S.R. 16, 45 C.S.R. 33, 45 C.S.R. 34, 45 C.S.R. 37, 45 C.S.R. 39, 45 C.S.R. 40, and 45 C.S.R. 41 which update and create new rules to incorporate the recent revisions to the federal air quality rules by the USEPA. AEP also wishes to endorse comments prepared and submitted by the West Virginia Chamber of Commerce and West Virginia Manufacturers Association.

AEP is pleased that the DAQ has chosen to adopt the CAIR and CAMR rules (45 CSR 37, 45 CSR 39, 45 CSR 40, and 45 CSR 41) for the utility sector largely as finalized by USEPA. One minor oversight was noted in both 45 CSR 39.53.1 and 45 CSR 40.53.1. It appears that the December 1, 2006 deadline for recording the 2009 through 2014 CAIR NO_x allowance allocations in the general compliance accounts was missed in Section 53.1 of both rules.

With regard to allowing other sources to opt-into the CAIR program or to absorb the non-EGU portion of the NO_x SIP Call program into the CAIR program, we believe that these options are appropriate so long as they do not jeopardize the ability of the West Virginia utility sources to participate in the USEPA CAIR trading program. To meet the USEPA cost estimates for CAIR, we believe that it is essential that the CAIR trading region be as large as possible.

AEP also supports the revisions to current rules 45 C.S.R. 15, 45 C.S.R. 16, 45 C.S.R. 33, and 45 C.S.R. 34, which update the rules to conform with the revisions to their respective federal counterparts.

If you have any questions on these comments, please contact G. J. Wooten of my staff at 614-716-1262.

Sincerely,

P. A. Dal Porto
Manager - Air Quality Services

cc: T. P. Mallan - Charleston
G. J. Wooten - AQS



WEST VIRGINIA CHAMBER OF COMMERCE

The Voice of Business in West Virginia

July 18, 2005

07-18-05P05

John A. Benedict, Director
West Virginia Department of Environmental Protection
Division of Air Quality
601 57th Street SE
Charleston, West Virginia 25304

Re: Comments on Proposed Regulations 45CSR15, 45CSR16, 45CSR25, 45CSR33, 45CSR34, 45CSR37, 45CSR39, 45CSR40, 45CSR41

Dear Director Benedict:

The West Virginia Chamber of Commerce is pleased to have the opportunity to comment on the proposed referenced rules. The West Virginia Chamber of Commerce has as its mission statement the goal of being an action-taking business organization. It is the state's largest business trade organization. We represent companies that employ more than half the state's private sector work force. The members of the Chamber seek not only to improve the state's business climate, but also to improve the state's quality of life.

As the amendments to Rules 15, 16, 25, 33 and 34 involve the incorporation of updates and amendments to federal regulations, the Chamber expresses its support for your efforts to maintain West Virginia's Air Quality Regulations in accord with the nation's regulatory structure. Moreover, we support the Division of Air Quality's efforts to issue the new regulations (45 CSR 37, 39, 40, 41) which incorporate the requirements contained in EPA's Clean Air Interstate Rule and the Clean Air Mercury Rule. Our review shows that these rules are in substantial agreement with the letter and purpose of these federal rules. The Chamber considers these proposed regulations to represent an important effort to link the goals of increased air quality with a reasonable and achievable program of emission control.

The Chamber would, however, like to express puzzlement and, to some degree of concern, about the change in language in 45 CSR 25. In Section 1.1.b there is a modification of the section that appears to significantly change the meaning of the requirement imposed. The existing language states:

“all persons engaged in the treatment, storage, or disposal of hazardous waste shall give careful consideration to the effects of the resultant emissions on the air quality or the areas affected by such hazardous waste or constituent thereof.”

John A. Benedict

Comments on Proposed Regulations 45CSR15, 45CSR16, 45CSR25, 45CSR33, 45CSR34,
45CSR37, 45CSR39, 45CSR40, 45CSR41.

Page 2 of 3

July 18, 2005

This phrase has been eliminated in the proposed section and replaced by:

“all persons engaged in the treatment, storage, or disposal of hazardous waste or any constituent thereof, will prevent emissions to the air in quantities which cause ambient air concentrations that may be injurious to human health or welfare or would interfere with the enjoyment of life or property.”

The new language certainly seems to be much more stringent than existing language, it is quite broad as well as vague. Such poorly defined and overly broad language could lead to subjectivity and as a consequence arbitrarily applied regulatory actions. We would like to better understand the reason the Division feels the need to introduce this change.

In summary, with the exception noted above, the West Virginia Chamber of Commerce supports the agency's proposed changes to the West Virginia Air Quality Regulations.

Sincerely



West Virginia Chamber of Commerce
Timothy P. Mallan, Chair, Air Subcommittee,
1624 Kanawha Blvd, E.
Charleston, WV 25301



WEST VIRGINIA MANUFACTURERS ASSOCIATION

2001 Quarrier Street, Charleston, WV 25311

Telephone: (304) 342-2123

FAX: (304) 342-4552

wvma@wvma.com

July 18, 2005

07-18-05P06:00 RCVD

John A. Benedict, Director
West Virginia Department of Environmental Protection
Division of Air Quality
601 57th SE
Charleston, WV 25304

RE: Comments on proposed 45 C.S.R. 15, 45
C.S.R. 16, 45 C.S.R. 25, 45 C.S.R. 33, 45
C.S.R. 34, 45 C.S.R. 37, 45 C.S.R. 39, 45
C.S.R. 40, and 45 C.S.R. 41.

COMMENTS OF THE WEST VIRGINIA MANUFACTURERS ASSOCIATION ON THE PROPOSED DIVISION OF AIR QUALITY RULES

The West Virginia Manufacturers Association ("WVMA") has many members operating sources which are affected by the West Virginia Department of Environmental Protection's Division of Air Quality ("DAQ") rules. In general, WVMA supports the DAQ's proposed rules 45 C.S.R. 15, 45 C.S.R. 16, 45 C.S.R. 25, 45 C.S.R. 33, 45 C.S.R. 34, 45 C.S.R. 37, 45 C.S.R. 39, 45 C.S.R. 40, and 45 C.S.R. 41 which update and create new rules to incorporate the recent revisions to the federal air quality rules by the United States Environmental Protection Agency ("EPA"). Specifically, the WVMA supports the revisions to current rules 45 C.S.R. 15, 45 C.S.R. 16, 45 C.S.R. 33, and 45 C.S.R. 34, which update the rules to conform with the revisions to their respective federal

Board of Directors

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counterparts. In addition, the WVMA supports the promulgation of new rules 45 C.S.R. 39, 45 C.S.R. 40 and 45 C.S.R. 41, which incorporate by reference the new Clean Air Interstate Rules promulgated by the EPA and new rule 45 C.S.R. 37, which incorporates the federal Clean Air Mercury Rule. However, WVMA has some concerns regarding the changes to proposed rule 45 C.S.R. 25, *et seq.*, To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage and Disposal Facilities ("Rule 25"). The WVMA also suggests certain uniform amendments to Rules 15, 16 and 34 to comport with the requirements of W.Va. Code §22-5-4(a)(4). The WVMA appreciates the opportunity to submit the following comments in response to the proposed rules by DAQ:

I. Clean Air Interstate Rule and Clean Air Mercury Rule

The EPA has recently promulgated the Clean Air Interstate Rule ("CAIR") to reduce the interstate transport of fine particulate matter ("PM 2.5") and ozone. Under the CAIR rule, EPA requires that certain States that are not meeting the annual PM 2.5 national ambient air quality standards ("NAAQS") or the 8-hour ozone NAAQS adopt and submit revisions to their State Implementation Plan ("SIP") that would eliminate specified amounts of SO₂ and/or NO_x emissions. The DAQ has proposed to incorporate the EPA's CAIR rule in the proposed new Rules 39, 40, and 41. In addition, EPA has recently promulgated the Clean Air Mercury Rule as a means of reducing mercury emissions. The DAQ has incorporated this rule in the new proposed Rule 37. We support the incorporation of these revisions to the federal rules by West Virginia in these new rules.

II. Rule 25

The WVMA is concerned with the DAQ's proposed revisions to Rule 25. Specifically, we object to the proposed language in Section 1.1.b. Currently, the language states that "all persons engaged in the treatment, storage, or disposal of hazardous waste shall give careful consideration to the effects of the resultant emissions on the air quality or the areas affected by such hazardous waste or constituent thereof." The proposed revisions state as follows: "all persons engaged in the treatment, storage, or disposal of hazardous waste or any constituent thereof, will prevent emissions to the air in quantities which cause ambient air concentrations that may be injurious to human health or welfare or would interfere with the enjoyment of life or property."

We believe that the proposed language is vague and overly stringent. The current language does not require affirmative action of the regulated sources to "prevent" such emissions. In addition, the DAQ has not offered any basis or reasoning for the proposed revisions. The WVMA is concerned that this provision could be applied subjectively to regulated sources as a "catch all" citation for alleged violations. All sources are bound by law not to cause a "statutory air pollution", but this rule goes beyond that obligation without necessary definitions.

Specifically, "constituent" is not defined in the proposed rule. The definition of "hazardous waste" in Rule 25 refers to the general definition in the federal regulations for "hazardous waste" which includes characteristic hazardous wastes and listed hazardous wastes. See, 40 CFR §261.3. The definition of "hazardous waste constituent" in the federal regulations only includes constituents that cause a hazardous waste to be listed or constituents specifically listed in the federal regulations. See, 40 CFR §260.10

Therefore, the definition of “hazardous waste constituent” in the federal regulations does not include constituents of *characteristic* hazardous wastes set forth under the general hazardous waste definition. The provision proposed in Rule 25 would not provide notice to a regulated entity as to what constitutes a constituent of a hazardous waste. As proposed, the term is so broad that it could literally include water or simple calcium, for example. In order to provide adequate clarification, the proposed rule would need to include a definition of “hazardous waste constituent” or, at the least, incorporate the definition of “hazardous waste constituent” under 40 CFR §260.10, which limits hazardous waste constituents to either those constituents listed under the federal regulations or those that cause a hazardous waste to be listed under the federal regulations.

In addition, “emissions to the air which cause ambient air concentrations that may be injurious to human health or welfare or would interfere with the enjoyment of life or property” is very subjective, especially since there are no ambient air quality standards for “hazardous waste.” Since the proposed provision would require sources to prevent such emissions, a definition of the term would be necessary to provide due process notice to the regulated sources. In order to comply with the proposed rule, a source must be able to understand its obligation. As proposed, the rule does not provide the clarity required under due process rights of the Constitution. Under the void-for-vagueness doctrine, constitutional due process requires that statutes and rules set forth impermissible conduct with sufficient clarity so that a person of ordinary intelligence knows what conduct is prohibited. See, State v. Appleby, 583 S.E.2d 800, 815 (W.Va. 2002). The West Virginia Supreme Court of Appeals has held that:

Elementary notions of fairness enshrined in our constitutional jurisprudence dictate that a person receive fair notice not only of the conduct that will subject him to punishment, but also of the severity of the penalty that a State may impose.

State v. Appleby, 583 S.E.2d at 815 (quoting State v. Miller, 476 S.E.2d 535, 546 (W.Va. 1996); BMW of North American, Inc. v. Gore, 517 U.S. 559, 574, 116 S.Ct. 1589, 1598 (1996)). Likewise, a rule which creates an affirmative obligation should do so with clarity sufficient that the regulated entity can clearly implement compliance. The proposed language in Section 1.1.b in Rule 25 does not clearly define the prohibited conduct and would, therefore, be void-for-vagueness. The WVMA urges the DAQ to withdraw the proposed revisions to Section 1.1.b. At the very least, if these revisions remain, the DAQ should further clarify the provision by including specific definitions of “constituent” of hazardous waste and for those levels of “emissions to the air which cause ambient air concentrations that may be injurious to human health or welfare or would interfere with the enjoyment of life or property”, all consistent with W.Va. Code §22-5-4(a)(4) as well. We do not believe that federal rules for hazardous waste management contain such stringent provisions.


III. Opacity Stringency Conformity

The WVMA believes that in order to comply with the mandate of W.Va. Code §22-5-4(a)(4), that the “stringency” provisions in Rules 15, 16, and 34, in Section 7.1 of those rules, must be modified with respect to opacity. Opacity is not a regulated pollutant; it is not a pollutant at all. Rather, it is a measure of light transmission used as an indicator of compliance with underlying pollutant emission limits. The federal counterpart rules for sources regulated by NESHAP, NSPS and MACT standards all contain opacity limits of 20%, not the 10% opacity reflected in Rule 2 for boilers.

Accordingly, we request that Section 7.1 in each of Rules 15, 16 and 34 be amended to add the following phrase at the end thereof: "Notwithstanding the foregoing principle, any affected source governed by this rule shall be subject to the opacity (visible emissions) limits contained in the United States Environmental Protection Agency's rules herein adopted by reference in lieu of any other opacity limit established in the rules of the Department of Environmental Protection."

The WVMA appreciates the opportunity to comment on the proposed revisions to the rules and supports the DAQ's proposal to adopt the recent revisions to the federal rules by the EPA. However, the WVMA recommends that the DAQ reconsider the adoption of the additional proposals as discussed hereinabove.

Respectfully submitted,



The West Virginia Manufacturers Association
John Pitner, Air Team Leader
2001 Quarrier Street
Charleston, WV 25311

cc: Karen S. Price, President, WVMA
Air Team Members

David W. White
8204 Asbury Hills Drive
Cincinnati, Ohio 45255

July 18, 2005

Mr. John Benedict
Director
West Virginia Division of Air Quality
601 57th Street SE
Charleston, West Virginia 25304

Re: Proposed Regulations and Revisions
45 CSR 15, 16, 25, 33, 34, 37, 39, 40 and 41

Dear Mr. Benedict,

Thank you for the opportunity to provide comments on the proposed revisions to 45 CSR 15, 16, 25, 33 and 34 and the proposed new regulations 45 CSR 37, 39, 40 and 41. Unfortunately, such proposed revisions and new regulations fail to meet the requirements of the enabling legislation under which they are proposed for promulgation.

The West Virginia Code provides that the director of the division of environmental protection, or such other person to whom the director has delegated authority, is authorized to promulgate legislative rules not inconsistent with the provisions of the Air Pollution Control Act. W. Va. Code § 22-5-4(a)(4). The Code also provides that it shall be unlawful to cause a statutory air pollution. W. Va. Code § 22-5-3. A statutory air pollution is defined as the discharge in a locality, manner and amount as to be injurious to human health or welfare, animal or plant life, or property, or which would interfere with the enjoyment of life or property. W. Va. Code § 22-5-2(6).

For decades residents of communities along the Kanawha and Ohio River valleys have been assaulted by noxious emissions from coke batteries, steel mills, chemical plants and other sources subject to 45 CSR 15, 16, 25, and 34. Residents of towns such as Follansbee, Nitro, Institute, and Belle have historically and continue to have the quiet enjoyment of their property disturbed by toxic and noxious emissions. Revising these regulations in their present forms will only serve the farce that they are somehow consistent with the requirements of the West Virginia Code.

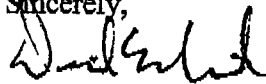
What are needed are regulations reflecting unique topographic conditions peculiar to West Virginia. The chronic and acute impacts on the health and welfare of West Virginians must be evaluated before any one of the regulations can be considered to have

been promulgated in accordance with the law. But no medical or toxicological evaluation has been conducted to make such a determination. Adoption of federal standards does not rise to the level of consistency with the law of West Virginia. These regulations are adopted under the authority of the West Virginia Code and must comply with its requirements.

Similarly the proposed programs under 45 CSR 37, 39, 40 and 41 do not provide for the protection of all residents of the state from adverse effects of power plant emissions. As research by past personnel of the Division of Air Quality has demonstrated, the vast majority of power plant emission impacts will occur at distances considerably less than 250 kilometers, generally within 50 kilometers. As such, trading programs such as 45 CSR 37 and transport programs such as 45 CSR 39, 40 and 41 are ineffective in controlling emission impacts of those residents adjacent to a paper reduction purchased on the open market, in contrast to an actual reduction required by the language of the West Virginia Code preventing creation of a statutory air pollution.

In short, the DAQ needs to quit permitting pollution and start enforcing the clear language of the law. Thank you again for the opportunity to provide these comments.

Sincerely,



David White

45CSR15

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

RESPONSE TO COMMENTS

On June 17, 2005, the Division of Air Quality (DAQ) commenced the public comment period and subsequently held a public hearing on July 18, 2005 to accept oral comments on revisions to proposed rule 45CSR15. Written comments were also accepted through 6:00 PM on Monday, July 18, 2005. No one verbally commented at the public hearing concerning proposed rule 45CSR15. Four commenters submitted written comments regarding proposed revisions to rule 45CSR15. DAQ addresses the written comments below.

I. COMMENTER: American Electric Power

COMMENT A. *The commenter states, "AEP also supports revisions to current rules 45 C.S.R. 15, 45 C.S.R. 16, 45 C.S.R. 33, and 45 C.S.R. 34, which update the rules to conform with the revisions to their respective federal counterparts."*

RESPONSE A. No response required.

II. COMMENTER: West Virginia Chamber of Commerce

COMMENT A. *The commenter states, "As the amendments to Rules 15, 16, 25, 33 and 34 involve the incorporation of updates and amendments to federal regulations; the Chamber expresses its support for your efforts to maintain West Virginia's Air Quality Regulations in accord with the nation's regulatory structure."*

RESPONSE A. No response required.

III. COMMENTER: West Virginia Manufacturer's Association

COMMENT A. *The commenter states, "Specifically, the WVMA supports the revisions to current rules 45 C.S.R. 15, 45 C.S.R. 16, 45 C.S.R. 33, and 45 C.S.R. 34, which update the rules to conform with the revisions to their respective federal counterparts."*

RESPONSE A. No response required.

COMMENT B. *The commenter states, "The WVMA believes that in order to comply with the mandate of W.Va. Code §22-5-4(a)(4), that the "stringency" provisions in Rules 15, 16, and 34, in Section 7.1 of those rules, must be modified with respect to opacity.The federal counterpart*

rules for sources regulated by NESHAP, NSPS and MACT standards all contain opacity limits of 20%, not the 10% opacity reflected in Rule 2 for boilers. Accordingly, we request that Section 7.1 in each of Rules 15, 16 and 34 be amended to add the following phrase at the end thereof: "Notwithstanding the foregoing principle, any affected source governed by this rule shall be subject to the opacity (visible emissions) limits contained in the United States Environmental Protection Agency's rules herein adopted by reference in lieu of any other opacity limit established in the rules of the Department of Environmental Protection.""

RESPONSE B. DAQ notes that there is not a federal counterpart for 45CSR2, and 45CSR2 therefore is not subject to a stringency comparison under W.Va. Code §22-5-4(a)(4). The opacity standard incorporated in 45CSR15 must comport to the federal counterpart opacity standard, and not to an opacity standard contained in another rule promulgated by the Secretary. Therefore, no action required.

IV. COMMENTER: David W. White

COMMENT A. *The commenter states, "Adoption of federal standards does not rise to the level of consistency with the law of West Virginia. These regulations are adopted under the authority of the West Virginia Code and must comply with its requirements.Revising these regulations in their present forms will only serve the farce that they are somehow consistent with the requirements of the West Virginia Code."*

RESPONSE A. The commenter does not provide legal or scientifically supportable evidence to support his assertion that 45CSR15 and its adoption of federal emission standards are not consistent with the West Virginia Code. The commenter generally assumes that these rules conflict with W.Va. Code §22-5-3, however, he does not identify specific sources of air pollutants which cause statutory air pollution nor does he provide evidence supporting the allegation of statutory air pollution. If such evidence is presented, the Secretary may, under W. Va. Code §22-1-3a, make a specific determination and adopt more stringent standards. At this point, the Secretary does not believe such a demonstration is necessary or appropriate. In addition, the DAQ may utilize its authority under W. Va. Code §22-5-3 on a case-by-case basis where warranted. The commenter also does not identify specific language in the proposed rules which conflict with §22-5-3. Additionally, the various federal counterpart regulations adopted each year under these rules adds to the types of sources controlled in West Virginia, and generally provide for more air pollutant reductions than previous versions of these rules. The commenter fails to explain how this conflicts with §22-5-3 or causes statutory air pollution. DAQ believes that adoption of national emission standards for hazardous air pollutants in West Virginia serves to reduce air pollutants rather than cause or contribute to statutory air pollution.