



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

West Virginia Bureau of Environment

Cecil H. Underwood
Governor

Michael P. Miano
Commissioner

July 29, 1999

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

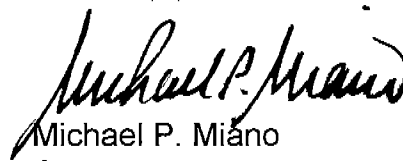
RE: 45CSR17 - "To Prevent and Control Particulate Matter Air Pollution From
Materials Handling, Preparation, Storage and Other Sources of Fugitive
Particulate Matter"

Dear Ms. Cooper:

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

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

Sincerely yours,


Michael P. Miano
Commissioner

MPM:cc

Attachment

cc: Skipp Kropp
Karen Watson
Carrie Chambers

Questionnaire

DATE: August 6, 1999

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

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

LEGISLATIVE RULE TITLE: 45CSR17 "To Prevent and Control Particulate Matter Air Pollution from Materials Handling, Preparation, Storage and Other Sources of Fugitive Particulate Matter"

1. Authorizing statute (s) citation: W. Va. Code §§ 22-5-1 et seq.

2.
 - a. Date filed in State Register with Notice of Hearing or Public Comment Period:
June 16, 1999 and July 14, 1999

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

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

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

N/A

- b. Date of hearing or comment period:

N/A

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

N/A

- d. Attach findings and determinations and reasons:

Attached N/A



CHARLESTON NEWSPAPERS

P.O. Box 2993
Charleston, West Virginia 25330
Billing 348-4898
Classified 348-4848
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INVOICE DATE	06/21/99
ACCOUNT NBR	037143002
SALES REP ID	0016
INVOICE NBR	648284001

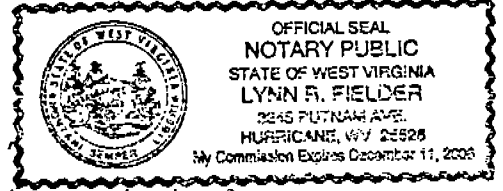
Legal pricing is based upon 63 words per column inch at a rate of \$.0925 per word.
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ISSUE DATE	AD TYPE	PUB	DESCRIPTION		AD NUMBER	AD SIZE TOTAL RUN	RATE	GROSS AMOUNT	NET AMOUNT
			REFERENCE NBR	PURCHASE ORDER #					
06/18	LEGF	GZ	PUBLIC HEARING 648284001		L454925	1X1838 18.38	5.83	107.07	
06/18	LEGF	DM	PUBLIC HEARING 648284001		L454925	1X1838 18.38	5.83	107.07	214.14
TOTAL INVOICE AMOUNT									214.14

State of West Virginia.

AFFIDAVIT OF PUBLICATION

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



PUBLIC HEARING
was duly published in said paper(s) during the dates listed below. and was posted at the front door of the court house of said Kanawha County.
West Virginia, on the 19TH day of JUNE 1999. Published during the following dates: 06/18/99-06/18/99
Subscribed and sworn to before me this 27 day of June
Printers fee \$ 214.14

Lynn S. Fielder
Notary Public of Kanawha County, West Virginia

**NOTICE OF
PUBLIC HEARING
AND PUBLIC
COMMENT PERIOD**

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

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

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

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

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

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

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

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

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

45CSR12 "Ambient Air Quality Standards for Nitrogen Dioxide"

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

45CSR17 "To Prevent and Control Particulate Matter Air Pollution from Materials Handling, Preparation, Storage and Other Sources of Fugitive Particulate Matter"

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

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

45CSR25 "To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities"

45CSR33 "Acid Rain Provisions and Permits"

45CSR34 "Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 63"

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

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

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

Upon authorization and promulgation of revisions to 45CSR4 and 45CSR17, the Office of Air Quality will not seek federal ap-

proval by the U.S. Environmental Protection Agency for inclusion in the State Implementation Plan for the federal Clean Air Act.

Upon authorization and promulgation of revisions to 45CSR16 and 45CSR34, the Office of Air Quality will seek federal delegation of authority from the U.S. Environmental Protection Agency to implement and enforce the revised standards.

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

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

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

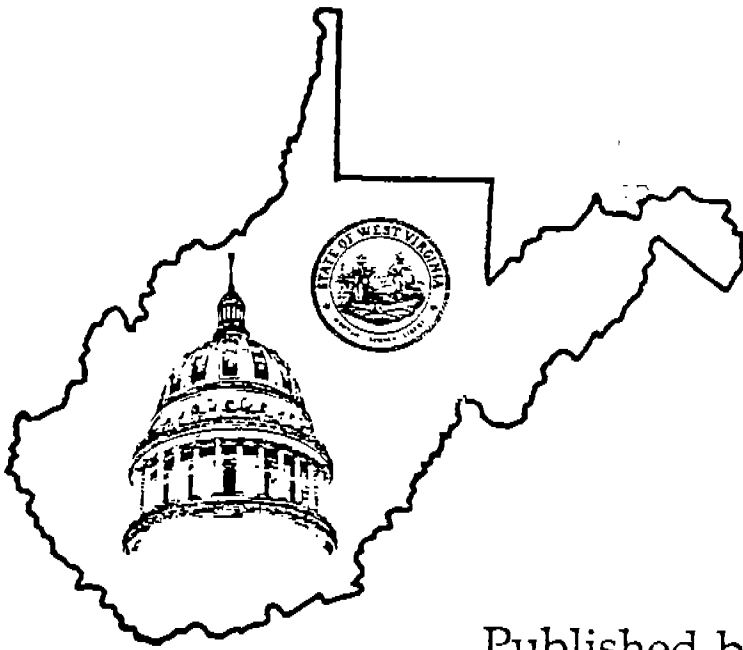
The hearing will be held in the Office of Air Quality's Conference Room located at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written and oral comments by the public will be accepted until the close of the hearing on July 19th and will be made a part of the rulemaking record. Comments will not be accepted by e-mail. The public may also submit written comments by mail or other delivery to the Office of Air Quality through July 19th for inclusion in the rulemaking record at the following address:

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

Copies of the proposed legislative rules will be available for public review on or before June 18, 1999 at the Office of Air Quality's Charleston office.

(454925)

WEST VIRGINIA REGISTER



Published by Ken Hechler, Secretary of State

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Issue 29

July 16, 1999

Pages 1242-1296

A Weekly Publication

Administrative Law Division

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Director*

*Lisa Blake
Leah Powell
Administrative Assistants*

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CHRONOLOGICAL INDEX, VOLUME XVI ISSUE 28

PROPOSED RULES FILED FOR PUBLIC HEARING

AGENCY	RULE/TYPE	AUTHORITY	HEARING/COMMENT PERIOD/LOCATION
Air Quality (45-16)	Standards of Performance for New Stationary Sources Pursuant to 40 CFR Part 60 Legislative	§22-5-1 et seq.	July 28, 1999, 5:00 p.m. Same as above
Air Quality (45-17)	To Prevent & Control Particulate Matter Air Pollution from Materials Handling, Preparation, Storage & Other Sources of Fugitive Particulate Matter Legislative	§22-5-1 et seq.	July 28, 1999, 5:00 p.m. Same as above
Air Quality (45-18)	To Prevent & Control Particulate Air Pollution from Direct Meat-Firing Devices Legislative	§22-5-1 et seq.	July 28, 1999, 5:00 p.m. Same as above
Air Quality (45-23)	To Prevent & Control Emissions from Municipal Solid Waste Landfills Legislative	§22-5-1 et seq.	July 28, 1999, 5:00 p.m. Same as above
Air Quality (45-25)	To Prevent & Control Air Pollution from Hazardous Waste Treatment, Storage or Disposal Facilities Legislative	§22-5-1 et seq.	July 28, 1999, 5:00 p.m. Same as above
Air Quality (45-33)	Acid Rain Provisions & Permits Legislative	§22-5-1 et seq.	July 28, 1999, 5:00 p.m. Same as above
Air Quality (45-34)	Emission Standards for Hazardous air Pollutants Pursuant to 40 CFR Part 63 Legislative	§22-5-1 et seq.	July 28, 1999, 5:00 p.m. Same as above

EMERGENCY RULES FILED

AGENCY	RULE/TYPE	AUTHORITY	EFFECTIVE DATE	DATE NOTICE FOR HEARING BY

NO EMERGENCY RULES FILED THIS WEEK

RULE MONITOR

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

LEGISLATIVE

WEST VIRGINIA
SECRETARY OF STATE
KEN REICHLER
ADMINISTRATIVE LAW DIVISION
FORM #2

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6/11

WEST VIRGINIA
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FORM #2

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Jul 11 4 10 PM '99

6/11

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

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

AGENCY: Division of Environmental Protection, Office of Air Quality TITLE NUMBER: 45
RULE TYPE: Legislative; CITE AUTHORITY W. Va. Code §§22-5-1 et seq.
AMENDMENT TO AN EXISTING RULE: YES X NO

AGENCY: Division of Environmental Protection, Office of Air Quality TITLE NUMBER: 45
RULE TYPE: Legislative; CITE AUTHORITY W. Va. Code §§22-5-1 et seq.
AMENDMENT TO AN EXISTING RULE: YES X NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 16

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 17

TITLE OF RULE BEING AMENDED: Standards of Performance for New Stationary Sources Pursuant to 40 CFR Part 60"

TITLE OF RULE BEING AMENDED: To Prevent and Control Particulate Matter Air Pollution from Materials Handling, Preparation, Storage and Other Sources of Fugitive Particulate Matter"

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

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

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

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

Edward L. Krupp, Chief
Office of Air Quality

Edward L. Krupp, Chief
Office of Air Quality

1558 Washington Street East
Charleston, WV 25311-2599

1558 Washington Street East
Charleston, WV 25311-2599

Edward L. Krupp, Chief

Edward L. Krupp, Chief

OTHER

NOTICE OF EXTENSION OF PUBLIC COMMENT PERIOD

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

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

45CSR25

"To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities"

45CSR33

"Acid Rain Provisions and Permits"

45CSR34

"Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 63"

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

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

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

Upon authorization and promulgation of revisions to 45CSR1 and 45CSR17, the Office of Air Quality will not seek federal approval by the U.S. Environmental Protection Agency for inclusion in the State Implementation Plan for the Federal Clean Air Act.

Upon authorization and promulgation of revisions to 45CSR16 and 45CSR34, the Office of Air Quality will seek Federal delegation of authority from the U.S. Environmental Protection Agency to implement and enforce the revised standards.

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

Upon authorization and promulgation of revisions to 45CSR21, the rule will be submitted to the Environmental Protection Agency as part of the State's Plan for Municipal Solid Waste (MSW) Landfills.

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

OTHER

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

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

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



Stuart Rosen
Senior Attorney

July 13, 1999

BY OVERNIGHT MAIL

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

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

Dear Mr. Harrington:

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

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

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

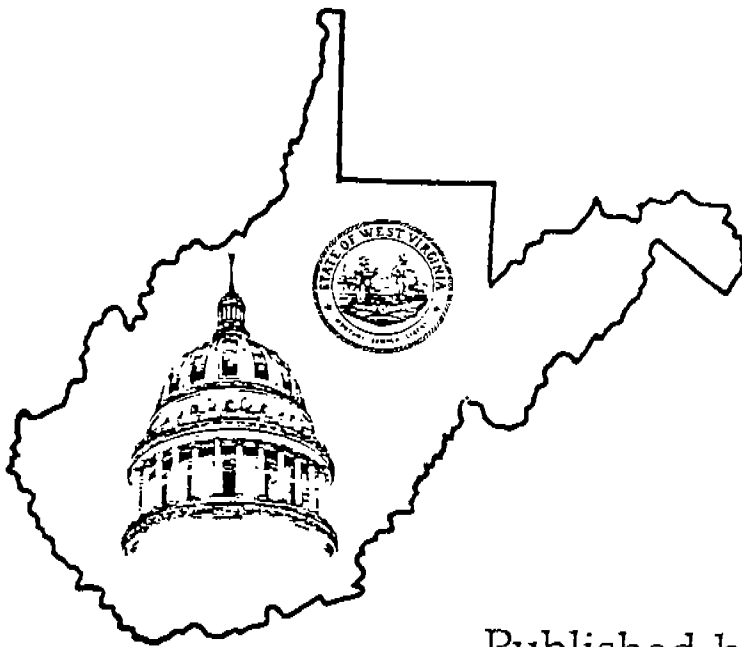
Very truly yours,

Stuart Rosen

RECEIVED: *[Handwritten initials]*



WEST VIRGINIA REGISTER



Published by Ken Hechler, Secretary of State

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Issue 25

June 18, 1999

Pages 1026-1084

A Weekly Publication

Administrative Law Division

*Judy Cooper
Director*

*Lisa Blake
Leah Powell
Administrative Assistants*

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Charleston, WV 25305-0770*

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PROPOSED RULES FILED FOR PUBLIC HEARING

<u>AGENCY</u>	<u>RULE/TYPE</u>	<u>AUTHORITY</u>	<u>HEARING/COMMENT PERIOD/LOCATION</u>
Air Quality (45-12)	Ambient Air Quality Standard for Nitrogen Dioxide Legislative	§§22-5-1 et seq.	July 19, 1999, 6:00 p.m. Same as Above
Air Quality (45-16)	Standards of Performance for New Stationary Sources Pursuant to 40 CFR Part 60 Legislative	§§22-5-1 et seq.	July 19, 1999, 6:00 p.m. Same as Above
Air Quality (45-17)	To Prevent & Control Particulate Matter Air Pollution from Materials Handling, Preparation, Storage & Other Sources of Fugitive Particulate Matter Legislative	§§22-5-1 et seq.	July 19, 1999, 6:00 p.m. Same as Above
Air Quality (45-18)	To Prevent & Control Particulate Air Pollution from Direct Meat- Firing Devices Legislative	§§22-5-1 et seq.	July 19, 1999, 6:00 p.m. Same as Above
Air Quality (45-23)	To Prevent & Control Emissions from Municipal Solid Waste Landfills Legislative	§§22-5-1 et seq.	July 19, 1999, 6:00 p.m. Same as Above
Air Quality (45-25)	To Prevent & Control Air Pollution from Hazardous Waste Treatment, Storage or Disposal Facilities Legislative	§§22-5-1 et seq. & §§22-18-1 et seq.	July 19, 1999, 6:00 p.m. Same as Above
Air Quality (45-33)	Acid Rain Provisions & Permits Legislative	§§22-5-1 et seq.	July 19, 1999, 6:00 p.m. Same as Above
Air Quality (45-34)	Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 63 Legislative	§§22-5-1 et seq.	July 19, 1999, 6:00 p.m. Same as Above

RULE MONITOR

AGENCY/SERIES NO	RULE	NOTICE	HEARING	EMER RULE	SEC/STATE	LRMRC-ACTION	LEGIS	FINAL FILE	EFFECTIVE
Air Quality (45-16)	Standards of Performance for New Stationary Sources Pursuant to 40 CFR Part 60 \$5.60 w/out federal reg's \$22.80 w/federal reg's Legislative	6/16/99	7/19/99						
Air Quality (45-16)	Standards of Performance for New Stationary Sources \$2.40 Legislative	6/16/98	7/21/98		7/31/98	Modified & Approved 12/15/98 Filed 1/5/99	HB 2533	5/20/99	6/1/99
Air Quality (45-17)	To Prevent & Control Particulate Matter Air Pollution from Materials Handling, Preparation, Storage & other Sources of Fugitive Particulate Matter \$5.60 Legislative	6/16/99	7/19/99						
Air Quality (45-18)	To Prevent & Control Particulate Air Pollution from Direct Meat-Firing Devices \$5.20 Legislative	6/16/99	7/19/99						
Air Quality (45-23)	To Prevent & Control Emissions From Municipal Solid Waste Landfills \$5.80 w/out federal reg's \$9.20 w/federal reg's Legislative	6/16/99	7/19/99						
Air Quality (45-24)	To Prevent & Control Emissions From Hospital/Medical/infectious Waste Incinerators \$4.20 Legislative	6/16/98	7/21/98		8/3/98	Modified & Amended 12/15/98 Filed 1/5/99	HB 2533	5/20/99	6/1/99
Air Quality (45-25)	To Prevent & Control Air Pollution from Hazardous Waste Treatment Storage or Disposal Facilities \$9.80 w/out federal reg's \$12.00 w/federal reg's	6/16/99	7/19/99						
Air Quality (45-25)	To Prevent & Control Air Pollution from Hazardous Waste Treatment Storage or Disposal Facilities \$7.00 Legislative	6/16/98	7/21/98		8/3/98	Modified & Amended 12/15/98 Filed 1/5/99	HB 2533	5/20/99	7/1/99

LEGISLATIVE

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Do Not Mark In This Box

FORM #1

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Division of Environmental Protection, Office of Air Quality TITLE NUMBER: 45

RULE TYPE: Legislative; CITE AUTHORITY W. Va. Code §§22-5-1 et seq.

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 16

TITLE OF RULE BEING AMENDED: Standards of Enforcement for New Subpart

Sources Pursuant to 40 CFR Part 60"

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

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

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

1558 Washington Street East

Charleston, WY 25311-2599

COMMENTS LIMITED TO: ORAL WRITTEN BOTH

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

Office of Air Quality

1558 Washington Street East

Charleston, WY 25311-2599

ATTACH A BRIEF SUMMARY OF YOUR PROPOSAL.

See file

Karen G. Walden Attorney

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Do Not Mark In This Box

FORM #1

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Division of Environmental Protection, Office of Air Quality TITLE NUMBER: 45

RULE TYPE: Legislative; CITE AUTHORITY W. Va. Code §§22-5-1 et seq.

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 17

TITLE OF RULE BEING AMENDED: "To Prevent and Control Particulate Matter Air Pollution

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

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

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

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

1558 Washington Street East

Charleston, WY 25311

COMMENTS LIMITED TO: ORAL WRITTEN BOTH

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

Office of Air Quality

1558 Washington Street East

Charleston, WY 25311

ATTACH A BRIEF SUMMARY OF YOUR PROPOSAL

See file

Karen G. Walden Attorney

OTHER

NOTICE OF PUBLIC HEARING AND
PUBLIC COMMENT PERIOD

Legal Notice
Page 2

July 19, 1999

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

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

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

45CSR25 "To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities"

45CSR33 "Acid Rain Provisions and Permits"

45CSR34 "Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 63"

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

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

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

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

Upon authorization and promulgation of revisions to 45CSR16 and 45CSR34, the Office of Air Quality will seek federal delegation of authority from the U. S. Environmental Protection Agency to implement and enforce the revised standards.

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

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

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

OTHER

Legal Notice
Page 3

The hearing will be held in the Office of Air Quality's Conference Room located at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written and oral comments by the public will be accepted until the close of the hearing on July 19th and will be made a part of the rulemaking record. Comments will not be accepted by e-mail. The public may also submit written comments by mail or other delivery to the Office of Air Quality through July 19th for inclusion in the rulemaking record at the following address:

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

Copies of the proposed legislative rules will be available for public review on or before June 18, 1999 at the Office of Air Quality's Charleston office.

NOTICE OF PUBLIC HEARING

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

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

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

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

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

Tim J. Carroll, Assistant Chief
Office of Air Quality
Northern Panhandle Regional Office
1911 Warwood Avenue
Wheeling, WV 26001

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

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

BUREAU OF ENVIRONMENT
DIVISION OF ENVIRONMENTAL PROTECTION

BRIEFING DOCUMENT

RULE TITLE: 45CSR17 - "To Prevent and Control Particulate Matter Air Pollution from Materials Handling, Preparation, Storage and Other Sources of Fugitive Particulate Matter"

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

B. SUMMARY OF RULE:

45CSR17 "To Prevent and Control Particulate Air Pollution from Materials Handling, Preparation, Storage and Sources of Fugitive Particulate Matter" (effective date May 1, 1979) seeks to control emissions from fugitive sources that have no other applicable control requirements in a limited number of geographical areas within the State.

The revisions contained herein are intended to extend the applicability of this rule to the entire state for prevention and control of fugitive particulate emissions. The rule revisions will provide the Office of Air Quality with needed enforcement capability when dealing with nuisance fugitive particulate emissions that result in citizen complaints.

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:

The purpose of 45CSR17 is to prevent and control particulate matter air pollution from materials handling, preparation and other sources of fugitive emissions. The revisions proposed herein were initiated by the Office of Air Quality as part of a broad effort to modernize and streamline all the Office rules. The current revision process is also intended to update and harmonize this rule with other rules of the Office of Air Quality. The proposed revisions are the result of a thorough review in a stakeholder process that was inclusive of the Office of Air Quality, representatives of the regulated community, concerned citizens and the environmental community.

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

There is no federal counterpart regulation; therefore, a determination of stringency is not required.

E. CONSTITUTIONAL TAKINGS DETERMINATION:

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

F. CONSULTATION WITH THE ENVIRONMENTAL PROTECTION ADVISORY COUNCIL:

At their June 10, 1999 meeting, the Environmental Advisory Council reviewed and discussed this rule - there were no substantive changes as a result of their discussion. (See attached minutes of that meeting.)

MINUTES

ENVIRONMENTAL PROTECTION ADVISORY COUNCIL

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

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

ATTENDING:

Advisory Council Members:

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

Environmental Protection:

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

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

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

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

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

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

- 45CSR1 - "TO PREVENT AND CONTROL AIR POLLUTION FROM COAL REFUSE DISPOSAL AREAS"
- 45CSR2 - "TO PREVENT AND CONTROL PARTICULATE AIR POLLUTION FROM COMBUSTION OF FUEL IN INDIRECT HEAT EXCHANGERS"
- 45CSR3 - "TO PREVENT AND CONTROL AIR POLLUTION FROM THE OPERATION OF HOT MIX ASPHALT PLANTS"
- 45CSR4 - "TO PREVENT AND CONTROL THE DISCHARGE OF AIR POLLUTANTS INTO THE OPEN AIR WHICH CAUSES OR CONTRIBUTES TO AN OBJECTIONABLE ODOR OR ODORS"
- 45CSR5 - "TO PREVENT AND CONTROL AIR POLLUTION FROM THE OPERATION OF COAL PREPARATION PLANTS, COAL HANDLING OPERATIONS AND COAL REFUSE DISPOSAL AREAS"
- 45CSR6 - "TO PREVENT AND CONTROL AIR POLLUTION FROM COMBUSTION OF REFUSE"
- 45CSR7 - "TO PREVENT AND CONTROL PARTICULATE MATTER AIR POLLUTION FROM MANUFACTURING PROCESSES AND ASSOCIATED OPERATIONS"
- 45CSR10 - "TO PREVENT AND CONTROL AIR POLLUTION FROM THE EMISSION OF SULFUR OXIDES"
- 45CSR12 - "AMBIENT AIR QUALITY STANDARD FOR NITROGEN DIOXIDE"
- 45CSR16 - "STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES PURSUANT TO 40 CFR PART 60"
- 45CSR17 - "TO PREVENT AND CONTROL PARTICULATE MATTER AIR POLLUTION FROM MATERIALS HANDLING, PREPARATION, STORAGE AND OTHER SOURCES OF FUGITIVE PARTICULATE MATTER"
- 45CSR18 - "TO PREVENT AND CONTROL PARTICULATE AIR POLLUTION FROM DIRECT MEAT-FIRING DEVICES"
- 45CSR23 - "TO PREVENT AND CONTROL EMISSIONS FROM MUNICIPAL SOLID WASTE LANDFILLS"
- 45CSR25 - "TO PREVENT AND CONTROL AIR POLLUTION FROM HAZARDOUS WASTE TREATMENT, STORAGE, OR DISPOSAL FACILITIES"
- 45CSR33 - "ACID RAIN PROVISIONS AND PERMITS"
- 45CSR34 - "EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS PURSUANT TO 40 CFR PART 63"

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

199CSR1 - "SURFACE MINING BLASTING RULE"

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Open Discussion:

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

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

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 45CSR17 - "To Prevent and Control Particulate Matter Air Pollution from Materials Handling, Preparation, Storage and Other Sources of Fugitive Particulate Matter"

Type of Rule: Legislative Interpretive Procedural

Agency: Office of Air Quality

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

1. Effect of Proposed Rule	Annual		Fiscal Year		
	Increase	Decrease	Current	Next	There- after
Estimated Total Cost	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ -0-
Personal Services	-0-	-0-	-0-	-0-	-0-
Current Expense	-0-	-0-	-0-	-0-	-0-
Repairs and Alterations	-0-	-0-	-0-	-0-	-0-
Equipment	-0-	-0-	-0-	-0-	-0-
Other	-0-	-0-	-0-	-0-	-0-

2. Explanation of above estimates: The revisions proposed to 45CSR17 will have a negligible effect on the costs to the Office of Air Quality for continued implementation of this rule. Costs are covered under previous budget estimates.

3. Objectives of these rules: The objective of this rule, as revised, is to prevent and control particulate matter air pollution from materials handling operations and other sources of fugitive emissions. The revisions to this rule will provide state-wide applicability to sources that have no other requirement to control emissions of particulate matter.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

See Section 2.

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

The revisions proposed to rule 45CSR17 will have minimal impact for industrial sources. Such sources are generally subject to other rules of the Office of Air Quality regulating the emissions of particulate matter. Some unregulated sources which are not subject to other rules may be required to minimize emissions of fugitive dust by this rule revision.

C. Economic Impact on Citizens/Public at Large.

The revisions proposed may affect some of the public at large who in the past have had no specific applicable requirements to minimize emission of fugitive dust.

Date: 6/11/99

Signature of Agency Head or Authorized Representative

Karen G. Watson
Karen G. Watson, Attorney

NOV 13 1999

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

Aug 6 3 29 PM '99

SERIES 17
TO PREVENT AND CONTROL PARTICULATE MATTER
AIR POLLUTION FROM MATERIALS HANDLING, PREPARATION, STORAGE
AND OTHER SOURCES OF FUGITIVE PARTICULATE MATTER

OFFICE OF THE CLERK OF THE SENATE
SECRETARY OF STATE

§45-17-1. General.

1.1. Scope. -- The purpose of Series 17 this rule is to prevent and control particulate matter air pollution from materials handling, preparation, storage; and other sources of fugitive particulate matter. ~~and shall apply to the County of Kanawha; and the Magisterial Districts of Valley (Fayette County), Scott and Pocatalico (Putnam County), Tygart (Wood County), the City of Fairmont and those portions of Union and Winfield Magisterial Districts west of Interstate I-79 (Marion County).~~

~~To insure the attainment and maintenance of West Virginia's ambient air quality standards, it is the intent of the Director to evaluate sources of fugitive particulate matter and to prevent such sources from jeopardizing the attainment or maintenance of these standards by requiring the application of the best control methods or technology practicable.~~

1.2. The Director particularly urges the cooperation of municipalities in utilizing street sweepers equipped with dust capturing equipment, on a regular basis, to minimize particulate matter reentrainment into the air from heavily trafficked streets. In addition, municipalities should take such action as necessary to control fugitive particulate matter emissions arising from unpaved streets, access roads, private parking lots; and any other such sources of uncontrolled particulate matter.

~~It is the intent of the Director that fugitive particulate matter sources be controlled in a timely and progressive manner, so that all such sources are in compliance with this rule as soon as possible, but not later than December 31, 1982.~~

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

1.3.4. Filing Date. -- ~~March 30, 1979;~~

1.4.5. Effective Date. -- ~~May 1, 1979;~~

1.6. Former Rules. -- This legislative rule amends 45CSR17 "To Prevent and Control Particulate Air Pollution from Materials Handling, Preparation, Storage and Sources of Fugitive Particulate Matter" which was filed on March 30, 1979, and which became effective May 1, 1979.

~~§45-17-2. Area Affected:~~

~~— The County of Kanawha, and the Magisterial Districts of Valley (Fayette County), Scott and Pocatalico (Putnam County), Tygart (Wood County), the City of Fairmont and those portions of Union and Winfield Magisterial Districts west of Interstate I-79 (Marion County);~~

§45-17-32. Definitions.

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

3.2. ~~[RESERVED]~~

3.2.2. "Director" means the ~~D~~director of the ~~West Virginia D~~division of ~~E~~environmental ~~P~~rotection or such other person to whom the ~~D~~director has delegated authority or duties pursuant to W. Va. Code §22-1-6 or §22-1-8.

3.102.3. "Fugitive Particulate Matter", for the purpose of this rule, means particulate matter which becomes airborne from activities associated

~~with the transporting of materials; disposal areas; haul roads; plant grounds; public, private, and industrial parking areas or lots; public and private streets and highways; mobile drills; construction and demolition and similar activities; including, but not limited to: handling, transporting or storage of materials; storage structure(s); the use, repair, construction, alteration, renovation or demolition of building(s), road(s) or other activities; disposal areas; haul roads; plant grounds; public, private and industrial parking areas or lots; public and private streets and highways; mobile drills; and any other activity which generates airborne particulate matter.~~

~~3.11-2.4.~~ "Materials" includes, but is not limited to, limestone, dolomite, iron ore, slag, coke, coal, sandstone, magnetite, sinter, sand, coal refuse, soda ash, ash, cement or earth.

~~3.62.5.~~ "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

~~3.52.6.~~ "Particulate Matter" means any material except uncombined water that exists in a finely divided form as a liquid or solid.

~~3.4.2.7.~~ "Person" means any and all persons, natural or artificial, including the state of West Virginia or any other state, the United States of America, any municipal, statutory, public or private corporation organized or existing under the laws of this or any other state or country, and any firm, partnership; or association of whatever nature.

2.8. "Statutory Air Pollution" means and is limited to the discharge into the air by the act of man of substances (liquid, solid, gaseous, organic or inorganic) 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.

~~3.7.~~ "Air Pollutants" means solids, liquids, or gases which, if discharged into the air, may result in a statutory air pollution:

~~3.8.~~ "Air Pollution Control Equipment" means any equipment used for collecting, converting or

~~suppressing particulate matter for the purpose of preventing or reducing discharge of such particulate matter into the open air.~~

~~3.9.~~ "Materials Handling and Preparation Activity" shall include, but not be limited to, the ~~crushing, grinding, breaking, conveying, loading, unloading, transferring and classifying of materials.~~

~~3.12.~~ "Disposal Area" means any area where waste material is deposited for disposal. Such waste material shall include, but not be limited to, coal refuse, ash, material collected by air pollution control equipment, process overload discharges, building demolition wastes, contaminated products and materials.

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

~~§45-17-4. Control and Prohibition of Particulate Emissions From Materials Handling, Preparation and Storage:~~

~~4.1.~~ No person shall cause, suffer, allow, or permit the discharge or particulate matter from any materials handling and/or preparation activity in excess of ten percent (10%) opacity averaged over a six (6) minute period:

~~4.2.~~ No person shall cause, suffer, allow or permit the sustained discharge of particulate matter into the open air in such a manner as to be visible from any inactive storage pile:

~~Control measures that should be utilized in the storage of materials include, but are not limited to; the use of wetting and surface bonding agents; partial or total enclosures or draping of material on storage piles; or storage of materials in silos or bins with air pollution control equipment installed to prevent particulate emissions that are displaced by air during loading and/or unloading operations.~~

~~4.3.~~ Where any air pollution control equipment or fugitive particulate matter suppression system utilizes water in its operation, such equipment shall be designed for all-weather

use.

~~§45-17-5. Control of Particulate Emissions From Disposal Areas:~~

~~—No person shall cause, suffer, allow or permit the sustained air entrainment of particulate matter from a disposal area, except at such portions of the disposal area where depositing and/or loading out activity takes place. Good practice must be utilized to disturb only the smallest part of a disposal area possible for such activities. Section 4.1. of this rule shall apply to materials deposition and/or loading out activities.~~

~~§45-17-6. Control of Fugitive Particulate Matter Emissions From Roads, Haul Ways and Parking Lots:~~

~~—As determined by the Director, a person may be required to minimize particulate matter air entrainment from vehicle activity or natural wind effects on haul ways, haul roads, parking lots and other surfaces.~~

~~§45-17-7. Control and Prohibition of Fugitive Particulate Matter Emissions From Vehicles:~~

~~No person shall cause, suffer, allow or permit a vehicle to be driven or moved on any public or private street, road, alley, highway or other thoroughfare unless such vehicle is so constructed or its cargo treated in such a manner as to prevent its contents from dripping, sifting, leaking or otherwise escaping therefrom, so as not to create conditions which result in particulate matter becoming airborne.~~

~~§45-17-8. Control and Prohibition of Fugitive Dust Emissions From Construction or Demolition Activities:~~

~~—No person shall cause, suffer, allow or permit the sustained escape of particulate matter into the open air from any construction, demolition site or abrasive cleaning operation that, in the judgement of the Director, will have an adverse effect on the ambient air quality. Such control measures as necessary shall be applied to prevent fugitive particulate matter emissions from such sources. Control measures may include adequate~~

~~containment methods for abrasive cleaning operations, liquid treatment of haul roads and other surfaces, covering of material transport vehicles, the prompt removal of tracked material from roads or streets or other control measures specified by the Director.~~

§45-17-3. Control and Prohibition of Fugitive Particulate Emissions.

3.1. No person shall cause, suffer, allow or permit fugitive particulate matter to be discharged beyond the boundary lines of the property on which the discharge originates or at any public or residential location, which causes or contributes to statutory air pollution.

3.2. When a person is found in violation of this rule, the Director may require the person to utilize a system to minimize fugitive particulate matter. This system to minimize fugitive particulate matter may include, but is not limited to, the following:

3.2.a. Use, where practicable, of water or chemicals for control of particulate matter in demolition of existing buildings or structures, construction operations, grading of roads or the clearing of land;

3.2.b. Application of asphalt, water or suitable chemicals on unpaved roads, material stockpiles and other surfaces which can create airborne particulate matter;

3.2.c. Covering of material transport vehicles, or treatment of cargo, to prevent contents from dripping, sifting, leaking or otherwise escaping and becoming airborne, and prompt removal of tracked material from roads or streets.

3.2.d. Installation and use of hoods, fans and fabric filters to enclose and vent the handling of materials, including adequate containment methods during sandblasting, abrasive cleaning or other similar operations.

§45-17-94. Control Programs and Schedules.

9.1.4.1. Any person operating a facility a source of fugitive particulate matter in violation of

the provisions of this rule shall ~~present~~ submit a control program upon the request of the Director. The control program shall be embodied in a consent order as provided in W. Va. Code §22-5-4.

~~9.2. To the extent allowed by law and as requested by the Director, each municipality and county commission shall present such plans and programs as necessary to provide for the scheduled control and reduction of fugitive particulate matter by the activities regulated by this rule that are under their jurisdiction:~~

~~— Such programs shall be submitted in such reasonable time as ordered by the Director and shall be progressive in nature so as to implement the earliest possible control of fugitive particulate matter into a schedule which meets the requirements of this rule:~~

~~— Such schedules of compliance by that municipality or county commission shall be entered into a binding consent order between the municipality or county commission and the Director:~~

~~§45-17-10. Registration and Reporting:~~

~~— At such reasonable times as the Director may designate, persons owning or operating facilities involving materials handling, preparation and storage, disposal areas or other sources of fugitive particulate matter as covered by this rule, may be required to register such sources with the Director and/or furnish periodic reports concerning such activities or sources:~~

~~§45-17-115. Variance~~

~~5.1. Because of temporary conditions beyond the control of any person, a~~ A variance may be granted ~~for~~ up to ten (10) days upon presentation of sufficient evidence to the Director from the requirements of this rule by the Director for conditions beyond the control of any person. Any request for a variance shall contain evidence satisfactory to the Director. Variances of over ten (10) days may be granted by the Director, provided a an acceptable corrective control program has been submitted by the person requesting said variance.

§45-17-6. Exemptions.

6.1. Sources that are subject to the fugitive particulate matter emission requirements of 45CSR2, 45CSR3, 45CSR5 and 45CSR7 shall be exempt from the provisions of this rule, provided that such sources shall not be exempt from the provisions of W.Va. Code §§22-5-1 et seq., including the provisions of §22-5-3 relating to statutory air pollution.

6.2. Normal agricultural activities shall be exempt from the provisions of this rule, to the extent that such activities do not cause, suffer, permit or allow statutory air pollution as defined in this rule.

§45-4-7. Enforcement.

7.1. Notwithstanding any other provisions in this rule, the Director may take any and all enforcement actions authorized under the Code for a violation of this rule, including, but not limited to, requiring the immediate cessation or abatement of the discharge causing or contributing to statutory air pollution.

§45-4-8. Inconsistency Between Rules.

8.1. In the event of any inconsistency between this rule and any other existing rule of the Division of Environmental Protection, such inconsistency shall be resolved by the determination of the Director and such determination shall be based upon the application of the more stringent provision, term, condition, method or rule.

8.2. Fugitive particulate matter emission requirements of any other applicable rule issued by the Director may be taken into consideration by the Director in determining compliance with this rule.

~~§45-17-12. Conflict With Other Rules:~~

~~When a provision of this rule conflicts with similar portion(s) of any other rule previously adopted by the Director, the most stringent provision or requirement will apply:~~

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

ORIGINAL

In the matter of:

PUBLIC HEARING ON PROPOSED LEGISLATIVE RULE

45 CSR 17 "To Prevent and Control Particulate Air
Pollution from Materials Handling,
Preparation, Storage and Sources of
Fugitive Particulate Matter"

Transcript of proceedings had at a public hearing in the above-styled matter for the West Virginia Division of Environmental Protection, Office of Air Quality at the Conference Room, 1558 Washington Street, East, Charleston, West Virginia, 25305, commencing at 6:36 p.m. on the 19th day of July 1999, pursuant to notice.

P R O C E E D I N G S

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

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

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

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

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

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

20 The purpose of this public hearing is to accept
21 comments on 45 CSR 17, "To Prevent and Control Particulate
22 Air Pollution from Materials Handling, Preparation,
23 Storage and Sources of Fugitive Particulate Matter,"
24 effective date May 1, 1979. It seeks to control the

1 emissions from fugitive sources that have no other
2 applicable control requirements in a limited number of
3 geographical areas within the State.

4 The revisions contained herein are intended to extend
5 the applicability of this rule to the entire state for
6 prevention and control of fugitive particulate emissions.
7 The rule revisions will provide the Office of Air Quality
8 with needed enforcement capability when dealing with
9 nuisance fugitive particulate emissions that result in
10 citizen complaints.

11 The purpose of 45 CSR 17 is to prevent and control
12 particulate matter air pollution from materials handling,
13 preparation and other sources of fugitive emissions. The
14 revisions proposed herein were initiated by the Office of
15 Air Quality as part of a broad effort to modernize and
16 streamline all the Office rules. The current revision
17 process is also intended to update and harmonize this rule
18 with other rules of the Office of Air Quality. The
19 proposed revisions are the result of a thorough review in
20 a stakeholder process that was inclusive of the Office of
21 Air Quality, representatives of the regulated community,
22 concerned citizens and the environmental community.

23 Upon authorization and promulgation of revisions to
24 45 CSR 17, the Office of Air Quality will not seek federal

1 approval by the U.S. Environmental Protection Agency for
2 inclusion in the State Implementation Plan for the Federal
3 Clean Air Act.

4 The floor is now open for public comment.

5 MS. KATHY BECKETT: My name is Kathy Beckett, and
6 I'm an attorney for the law firm of Jackson & Kelly. I'm
7 offering the following statement on behalf of the West
8 Virginia Chamber of Commerce concerning the rule-making
9 package presented for comment by the Office of Air
10 Quality. I specifically raise this now under Regulation
11 17 because it is the final of the series of regulations
12 that were subject to the stakeholder review process that
13 we're going to discuss tonight.

14 Although the Chamber will be filing more detailed
15 written comments concerning each of these rules on the
16 deadline of July 28th, I would like to offer the following
17 public statement for this evening's hearing.

18 The Office of Air Quality held a public meeting in
19 Flatwoods on November 17 where it announced its goal of
20 updating and harmonizing the Office of Air Quality's
21 existing rules in time for submittal to the 2000
22 Legislature. It was announced that all rules were open
23 for discussion and review.

24 With that announcement began a rigorous schedule of

1 meetings to begin the process of collecting comments and
2 ideas about the need to update and streamline the state's
3 air quality regulatory program. For those of you who
4 attended those meetings, I do not have to tell you about
5 the tireless commitment of time the OAQ staff devoted to
6 managing the review process. Additional support from the
7 stakeholder participants combined to create a very rich
8 experience.

9 The Chamber is a strong supporter of the stakeholder
10 review process. The model where a state administrative
11 agency invites the public to engage in an honest,
12 thoughtful, open and informal exchange of interests and
13 ideas with the goal of proposing public policy is an
14 excellent one. Those who attended and participated in the
15 meetings that have taken place over the past several
16 months were presented with an opportunity to inquire as to
17 the purpose of various provisions, question one another's
18 needs, suggest solutions to issues and propose language,
19 all of which were presented to the Chief for his
20 consideration. The more varied the vantage points of
21 those engaged in the discussion, the more creative the
22 answer became. The Chamber applauds this process and
23 encourages the Agency and the public to look for other
24 opportunities to engage in such an exercise.

1 As will be identified in the written comments on
2 behalf of the Chamber, there is a very delicate balance
3 that was created in the spirit of compromise. Some of the
4 proposed modifications that were the subject of the review
5 process represent concepts that meet the specific needs
6 and concerns of certain stakeholders. Recognition of the
7 needs of all stakeholders and balancing those needs
8 against one another and the law is what the development of
9 public policy is about. Great efforts were made during
10 the discussions to blend the needs of the group into the
11 recommended changes. The Chamber recommends that the
12 Office of Air Quality develop a thorough response to
13 comments, as a means of recording the intent of
14 modifications that have been proposed and will be made.

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

1 Tonight, the Chamber is participating in the next
2 phase of the public review process by providing oral
3 comments on the proposed regulatory changes that have been
4 inspired, in part, by the recommendations of the
5 stakeholders. The Chamber supports the stakeholder
6 process and supports this rule-making package.

7 MS. CHANDLER: Thank you, Ms. Beckett. Further
8 comments?

9 MS. CONNIE GRATOP LEWIS: Yes. My name is Connie
10 Gratop Lewis. I'm with the League of Women Voters, and I
11 also was a participant in the stakeholder process for
12 these regulations. I would like to echo the comments made
13 by the other two speakers about the value of this process,
14 and I would also like to re-echo what Tim Mallan said
15 about coming back in a few years to revisit these
16 regulations to see how well they have performed or not
17 performed. I would also like to suggest that other
18 divisions within Environmental Protection also use the
19 stakeholder process as they work through their rules and
20 that, hopefully, it can spread to other agencies within
21 the State government. I believe that many agencies could
22 benefit from this rather exhausting and time-consuming
23 process. I think we would all be better off for it.

24 MS. CHANDLER: Thank you. Additional comments? (No

1 response.) There being nothing further, the public
2 hearing for 45 CSR 17 is concluded.

3 (WHEREUPON, the hearing was
4 concluded at 6:45 p.m.)

WEST VIRGINIA DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF AIR QUALITY

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

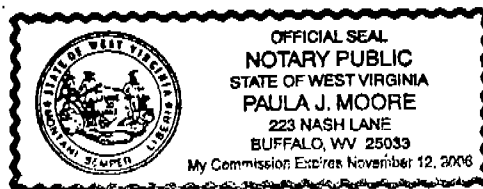
I, the undersigned, Paula J. Moore, a Certified Court Reporter and Notary Public within and for the State of West Virginia, duly commissioned and qualified, do hereby certify that the foregoing is, to the best of my skill and ability, a true and accurate transcript of all the proceedings had in the aforementioned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

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

Paula J. Moore

Certified Court Reporter
Notary Public

My commission expires November 12, 2006.



Division of Environmental Protection

6:00 PM

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

COMMENT
YES NO

45CSRM

ADDRESS

NAME

NAME	ADDRESS	COMMENT YES	NO
1. Sami Grap Lewis - LW	9408 Venetta Ave SE		
2. Tom O'James	HC 80 Box 26A Jordan WV		
3. Bill Haver	AE 65 Box 42-A Lookout WV		
4. Fred Durham	1615 Washington St East		✓
5. Ken Ward	Charleston Gazette 1001 Virginia St, E, City		✓
6. Brian Miller	WVMDA 1624 KAMMARA BLVD A, CHARLESTON, WV 25301		
7. LAUREA CUMBER	WV DEP CAG 1555 Washington St E Charleston WV		✓
8. EARL DILLINGSLEY	"		✓
9. Jesse Atkins	"		✓
10. Robert Keathley	"		✓
11. Karen Watson	" 1615 Washington St. E, Chas 25311		✓
12. JAMES KOJCEW	412 TYNE-AVEAY ROAD MORGANTOWN, WV 26505		✓
13. Gerald Bollner	PO Box 68 Washington, WV 26180 GE Plastics		✓
14. Sam Nixon	WV DEP EAD 10 MacJunkin Rd Nitro 25143		
15. JANE BENEACZ	WV DEP OAS CHARLESTON		✓

Division of Environmental Protection

6:00 PM

Public Hearing: OAQ Legislative Rules - 2000 Session

Time/Date: July 19, 1999

ADDRESS 4SCSR 1617

COMMENT
YES NO

NAME	ADDRESS	COMMENT YES	NO
1. <u>Jan M... ..</u>	<u>Box 144 Capuley, WV 24931</u>		
2. <u>Joseph Robert</u>	<u>Box 66 Chestonville WV 24931</u>		
3. <u>Rick W... ..</u>	<u>PO Box 190 Clarksburg, WV 26302</u>		X
4. <u>Kathy G. Beckett</u>	<u>PO Box 553, Charleston, WV 25322</u>	X	
5. <u>Tim Mallan</u>	<u>301 Virginia St. E. Charleston, WV 25327</u>	X	
6. <u>Sara P...</u>	<u>M... .. WV 26201</u>		X
7.			
8.			
9.			
10.			
11.			
12.			
13.			
14.			
15.			

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

Timmy
K...
L...
Robert
E...

Karex

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

Dear Mr. Kropp;

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

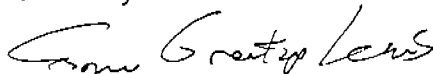
Having read all the proposed rules in one sitting, I am struck first by the amount of discretion given to the Director. I recognize that discretion and judgement are necessary to the effective enforcement of air quality regulations, but in 45CSR 3, section 5.4, the director has discretion to revoke the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

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

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

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

Sincerely


Conni Gratop Lewis

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



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

July 1, 1999

Dear Skipp:

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

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

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

Sincerely,

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

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



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

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



Contractors Association of West Virginia

2114 Kanawha Boulevard, E. • Charleston, West Virginia 25311 • (304) 342-1166 FAX (304) 342-1074
www.cawv.org • cawv@cawv.org

*Karen
Watsa*

*Jimmy
Karen Earl*

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James Ahern

Chairman, Flexible Pavements Council

Marty White

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Alice George

***Executive Committee**

July 27, 1999

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

Dear Chief Kropp:

The Contractors Association of West Virginia (CAWV) is a non-profit, trade organization representing over 450 firms that are involved directly and indirectly in the construction industry in West Virginia and surrounding states.

The CAWV is vitally interested in governmental regulatory programs that may impact its members and, to that end, has participated in the stakeholder process that has been conducted by the Office of Air Quality (OAQ) with respect to the revision of various air quality regulations. Certain changes to the regulations that had been requested by the CAWV in the course of the stakeholder process were not incorporated in the proposed rule that has been presented for public comment. The CAWV files these comments to identify what it believes are problems with the proposed regulations in the hope that the OAQ will consider further revisions.

The two regulations addressed by these comments are Series 6, "To Prevent and Control Air Pollution from Combustion of Refuse," and Series 17, "To Prevent and Control Particulate Matter Air Pollution from Materials Handling, Preparation, Storage and Other Sources of Fugitive Particulate Matter."



AB/BA

10-10-17 I. Comments on Proposed Revisions to Series 6:

10-10-17 56

The changes proposed to Series 6 that are of concern to the CAWV relate to open burning requirements. Under the current regulation there is a general prohibition on open burning with certain specified exceptions. Among the exceptions is the open burning of “construction and demolition waste,” so long as four conditions are met. Those conditions are:

- (1) There is no practical method for disposal of the material to be burned;
- (2) The health, safety, comfort and property of persons are protected from the effects of the burning;
- (3) The burning is not done for salvage purposes; and
- (4) “In non-rural areas” approval to conduct such burning is received in advance.

See 45 CSR 6, § 3.1.c.

The proposed rule would change this exception by prohibiting the open burning of “construction and demolition waste” altogether and by allowing the open burning of “land-clearing debris” only with the approval (presumably in advance) of the West Virginia Division of Environmental Protection (“WVDEP”). The CAWV, in the course of the stakeholder process and as evidence of its good faith in seeking constructive and positive changes to the regulations, did not object to the elimination of the construction and demolition waste burning option. The CAWV did object, however, to the requirement that all burning of land-clearing debris must receive advance approval from the WVDEP, regardless of where and when the burning occurred. We believe this is an unnecessary restriction on construction operations, particularly in rural areas. Furthermore, while the approval of the DEP will be

required in every instance, the proposed rule does not state that if the other three conditions on open burning are satisfied, such approval will be granted.

An additional concern raised by the CAWV in the stakeholder process is the absence of any time limits with respect to such approvals. Delays in granting such approvals can significantly impact construction schedules and result in onerous penalties being placed upon contractors. Although this generally has not been a problem in the past, and the OAQ has typically been responsive in providing approvals in non-rural areas, we are uncertain as to the timeliness with which approvals will be given with the proposed expansion of the open burning restrictions.

For these reasons, the CAWV urges that the proposed rule be revised by limiting the required approval for open burning of land-clearing debris to those activities occurring in “non-rural areas.” In the alternative, should the DEP require such approval in all locations, we request that a time limit be inserted such that if a requested approval is not granted within seven (7) days of the request, the request will be deemed approved.

A. Policy on Open Burning:

The OAQ currently has a policy that provides guidance with regard to its existing open burning requirements. This guidance generally has been followed by our members in the course of their operations. We understand that the OAQ is currently considering a revision to the open burning policy due in part to changes that may result from these proposed rules. The CAWV respectfully requests that the open burning policy be made available for public review and comment. We have been provided with an early draft of the policy through the stakeholder process and

appreciate the opportunity to review planned changes. However, we believe that formal adoption of such policy should occur only after there has been an opportunity for general public review and comment on the proposal.

II. Comments on Proposed Revisions to Series 17:

Series 17 has been a part of the regulations of the OAQ since at least 1979 and its purpose was to control particulate matter air emissions in certain counties in West Virginia where particular problems with air quality had been identified. Series 17 currently applies only to Kanawha County and selected portions of Fayette, Putnam, Wood and Marion counties. The proposed rule would revise Series 17 by expanding its coverage to encompass the entire state.

In addition, requirements applicable to construction and demolition activities are directly set out under the current rules. In contrast, very general requirements are set out in the proposed rule which prohibit discharges of fugitive particulate matter (dust) beyond boundary lines in a manner which causes or contributes to statutory air pollution. The proposed rule mandates, by implication, certain types of fugitive dust control activities that are to be followed in order to avoid violating the requirements of the rule. These activities include:

- 1) use, where practicable, of water or chemicals for control of particulate matter in demolition of existing buildings or structures, construction operations, grading of roads or the clearing of land;
- 2) the application of asphalt, water or suitable chemicals on unpaved roads, material stockpiles and other services which can create airborne

particulate matter;

3) covering of material transport vehicles, or treatment of cargo, to prevent contents from dripping, sifting, leaking or otherwise escaping and becoming airborne and prompt removal of tracked material from roads or streets; and

4) installation and use of hoods, fans and fabric filters to enclose and vent the handling of materials, including adequate containment of methods during sandblasting, abrasive cleaning or other similar operations. 45 CSR 17, § 3.2.

While these control requirements already appear in the current regulations, they are mandated only for a small area of our state.

The effect of the proposed changes to Regulation 17 is to create a new statewide regulatory program with regard to the control of fugitive dust. We believe this proposal is made without a demonstration that such a pervasive regulatory program is necessary to address general and widespread problems related to fugitive dust emissions. We have been unable at this point to identify the costs associated with statewide compliance with these requirements. However, we believe such costs would be significant.

The CAWV recommends that the OAQ retain the current approach with respect to the fugitive dust emissions, that is, first identify those specific locations of the state where such emissions have proven to be a problem, then specify the required controls. Should this require revisions to current § 2 of Series 17 with the specification of additional areas to which the regulation should be applied, the

CAWV would support such an approach.

III. Conclusion

The CAWV appreciates the opportunity to provide these comments to the OAQ with respect to the proposed changes to its regulations. We further appreciate the significant efforts made by the agency to allow open and free discussion with respect to its regulations in the course of the stakeholder process.

Should you have any questions concerning these comments, please contact me at 304-342-1166.

Sincerely,

Michael L. Clowser
Executive Director

cc: R.M. Brewer, CAWV President

Handwritten names: Karen, Earl, Bill, M, Laura, Ripe

Handwritten name: Wetton

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July 27, 1999

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MEMBER OF LEX MUNDI,
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OF INDEPENDENT LAW FIRMS

Edward L. Kropp, Chief
Office of Air Quality
WV Division of Environmental Protection
1558 Washington Street, East
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Re: Proposed Modifications to 45 CSR
1,2,3,4,5,6,7,10,16, 17, 18, 23, 25, 33, and
34.

Dear Chief Kropp:

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

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

45 CSR 2 - Particulate Emissions from Boilers

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

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

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

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

45 CSR 3 - Hot Mix Asphalt

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

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

45 CSR 4 - Objectionable Odors

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

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

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

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

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

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

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

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

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

45 CSR 6 - Combustion of Refuse

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

45 CSR 7 - Particulate Emissions from Manufacturing Processes

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

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

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

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

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

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

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

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

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

45 CSR 10 - Sulfur Oxides

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

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

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

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

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

45 CSR 17 - Fugitive Particulate Matter

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

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

45 CSR 18 - Meat Firing

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

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

45 CSR 16 - New Source Performance Standards

45 CSR 23 - Municipal Solid Waste Landfills

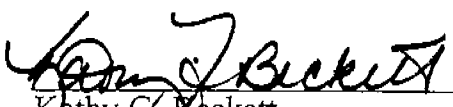
45 CSR 25 - Hazardous Waste Treatment, Storage, or Disposal Facilities

45 CSR 33 - Acid Rain

45 CSR 34 - Hazardous Air Pollutants

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

Respectfully, submitted this 27th of July, 1999.


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

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

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

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

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

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

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

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

**TO PREVENT AND CONTROL PARTICULATE AIR POLLUTION FROM
MATERIALS HANDLING, PREPARATION, STORAGE AND SOURCES OF
FUGITIVE PARTICULATE MATTER**

RESPONSE TO COMMENTS

On July 19, 1999 the Office of Air Quality (OAQ) held a public hearing to accept oral comments on proposed changes to 45CSR17 - "To Prevent and Control Particulate Air Pollution from Materials Handling, Preparation, Storage and Sources of Fugitive Particulate Matter." The Division of Environmental Protection, Office of Air Quality (OAQ) received written comments on the rule from the West Virginia Chamber of Commerce, the Contractors Association of West Virginia, and Conni Gratop Lewis. In addition, two persons commented at the public hearing concerning all of the OAQ's proposed rules. Both commenters were generally supportive of the proposed rules and the stakeholder process that was utilized by the OAQ to generate the proposed rules. One comment was received from the United States Environmental Protection Agency, Region III, requesting that the public comment period be extended. The OAQ responded to this comment by extending the comment period from July 19, 1999, to July 28, 1999. The OAQ has summarized these comments and provides the following response.

I. COMMENTER: Conni Gratop Lewis

COMMENT A. *(Oral Comment - July 19, 1999) The commenter offered thanks to the OAQ for conducting the review in a stakeholder process and urged periodic review of all Air Regulations. The commenter also suggested that all state agencies could benefit from this process.*

RESPONSE A. No response required.

COMMENT B. *(Written Comment - Submitted July 28, 1999) The commenter expressed concern about the lack of deadlines in this and other proposed rules and believes that such language where appropriate would strengthen the rule.*

RESPONSE B. The OAQ believes that deadlines established in this rule are appropriate and sufficient.

II. COMMENTER: West Virginia Chamber of Commerce

COMMENT A. *(Oral Comment - July 19, 1999) The commenter expressed thanks and appreciation for the stakeholder process as a means of revising the OAQ*

regulations.

RESPONSE A. No response required.

COMMENT B. *(Written Comment - Submitted July 27, 1999) Commenter supports the OAQ need for a regulatory tool that could be used to require management of fugitive emissions from sources that are otherwise not subject to OAQ's regulatory program.*

RESPONSE B. No response required.

III. COMMENTER: Contractors Association of West Virginia

COMMENT A. *(Written Comment - Submitted July 27, 1999) Commenter believes that the proposed rule change creates a statewide pervasive and unnecessary regulatory program .*

RESPONSE A. The OAQ believes there is a need for a regulatory tool to enforce fugitive dust emissions, statewide, from sources that presently have no other such applicable requirement (see subsection 6.1 of the rule). The OAQ believes this is especially important when dealing with nuisance type dust complaints.

COMMENT B. *(Written Comment - Submitted July 27, 1999) Commenter believes that while the current rule directly sets out requirements for construction and demolition activities only in certain areas of the state, the proposed rule mandates specific fugitive dust controls on a state wide basis.*

RESPONSE B. The OAQ will not, under this rule, mandate specific controls. If and when a source is found to cause or contribute to statutory air pollution, the source may be required to employ one or more of the listed control techniques to come into compliance.