

**WEST VIRGINIA**  
**SECRETARY OF STATE**

**KEN HECHLER**

**ADMINISTRATIVE LAW DIVISION**

**FILED**

Aug 12 4 12 PM '94

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

Form #3

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

AGENCY: West Virginia Division of Environmental Protection  
Office of Air Quality TITLE NUMBER: 45CSR38

CITE AUTHORITY WV Code 22-5-1 et seq.

AMENDMENT TO AN EXISTING RULE: YES \_\_\_ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 45CSR38

TITLE OF RULE BEING PROPOSED: "Provisions for Determination of Compliance  
with Air Quality Management Rules"

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

*Roger T. Moll*  
Authorized Signature

17.00  
5.60 w/o

45CSR38

PROVISIONS FOR DETERMINATION OF COMPLIANCE WITH  
AIR QUALITY MANAGEMENT RULES

STATEMENT OF CIRCUMSTANCE

This rule is being proposed pursuant to a finding of SIP inadequacy by USEPA with respect to compliance determination requirements or limitations in current state air quality rules. USEPA's notice was contained in a letter of May 16, 1994 (Peter Kostmayer to John Ranson). This rule is also necessary to adequately implement the state operating permit program under 45CSR30.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 45CSR38 - Provisions for Determination of Compliance with Air Quality Management Rules

Type of Rule:  X  Legislative   Interpretive   Procedural

Agency:  Office of Air Quality

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

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

2. Explanation of above estimates:

This rule simply clarifies the type of information that may or will be used to determine compliance with or violation of emission standards and does not impose any new requirements upon agency staff or the regulated community.

3. Objectives of these rules:

The purpose of this rule is to clarify the types of data that may be used by an owner of a facility subject to air pollutant emission standards or by the Director of the Division of Environmental Protection in determining whether the facility is in compliance with or violation of the emission standards. The rule also clarifies the compliance testing procedures which are to be employed where existing emissions standards enforced by the Director are not definitive.

4. Explanation of overall economic impact of proposed rule.
- A. Economic impact on state government.  
None
  - B. Economic impact on political subdivisions; specific industries; specific groups of citizens.  
None
  - C. Economic impact on citizens/public at large.  
None

Date: July 6, 1994

Signature of agency head or authorized representative:



---

G. Dale Farley  
Chief, Office of Air Quality

DATE: August 12, 1994  
TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE  
FROM: G. DALE FARLEY  
CHIEF, OFFICE OF AIR QUALITY  
DIVISION OF ENVIRONMENTAL PROTECTION

LEGISLATIVE RULE TITLE: Series 38 - "Provisions for Determination of Compliance with Air Quality Management Rules"

1. Authorizing statute(s) citation W. Va. Code §§22-5-1 et seq.
  
2. a. Date filed in State Register with Notice of Hearing:  
July 6, 1994
- b. What other notice, including advertising, did you give of the hearing?  
Class I legal advertisement filed in a newspaper published in each of  
the Air Quality Control Regions of West Virginia.  
Office of Air Quality mailing list.
- c. Date of hearing(s): August 9, 1994
- d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.  
Attached  No comments received
- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)  
August 12, 1994
- f. Name and phone number of agency person to contact for additional information:  
G. Dale Farley, Chief  
Office of Air Quality (Phone: 558-2275)

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

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

N/A

b. Date of hearing: 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

45CSR38

PROVISIONS FOR DETERMINATION OF COMPLAINE WITH  
AIR QUALITY MANAGEMENT RULE

SUMMARY

The purpose of this rule is to clarify the types of data that may be used by an owner of a facility subject to air pollutant emission standards or by the Director of the Division of Environmental Protection in determining whether the facility is in compliance with or violation of the emission standards. The rule also clarifies the compliance testing procedures which are to be employed where existing emissions standards enforced by the Director are not definitive.

45CSR38

TITLE 45  
LEGISLATIVE RULES  
BUREAU OF ENVIRONMENT  
DIVISION OF ENVIRONMENTAL PROTECTION  
OFFICE OF AIR QUALITY

SERIES 38  
PROVISIONS FOR DETERMINATION OF COMPLIANCE WITH  
AIR QUALITY MANAGEMENT RULES

45-38-1. General.

1.1. Scope. -- The purpose of this rule is to clarify the types of data that may be used by an owner of a facility subject to air pollutant emission standards or by the Director of the Division of Environmental Protection in determining whether the facility is in compliance with or violation of the emission standards. This rule is to be promulgated pursuant to Sections 110(a)(2)(A), (C) and (F), 113(a) and (e) and 114(a)(3) of the federal Clean Air Act Amendments of November 15, 1990. The rule also clarifies the compliance testing procedures which are to be employed where existing emissions standards enforced by the Director are not definitive.

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

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Incorporation by Reference -- Federal Counterpart Regulation. There is no counterpart federal rule.

1.6. Determination of Stringency -- Federal Counterpart Regulation. The Director has determined that this rule is no more or no less stringent than the requirements of the federal Clean Air Act. There is no promulgated counterpart federal rule.

1.7. Constitutional Takings Determination -- The Director has determined that this rule will not result in a constitutional taking of real property.

45-38-2. Definitions.

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

2.2. "Director" means the Director of the Division of Environmental Protection or such other person to whom the Director has delegated authority or duties pursuant to W. Va. Code §22-1-6 or §22-1-8.

## 45CSR38

2.3. "Division of Environmental Protection", 'DEP' means the Division of Environmental Protection as defined in W. Va. Code §§22-1-1 et seq.

2.4. "Enforceable" means enforceable by the Director and USEPA.

2.5. "Owner or operator" means any person who owns, leases, operates, controls, or supervises a stationary source subject to air pollutant emission standards.

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

2.7. "State Implementation Plan", 'SIP' means a State Implementation Plan approved by USEPA which provides for implementation, maintenance, and enforcement of national ambient air quality standards for each state (or portion thereof).

2.9. "Source" means any building, structure, facility, or installation which emits or may emit any regulated air pollutant.

2.10. "USEPA" means the United States Environmental Protection Agency.

### §45-38.3. Compliance Determination Methods and Procedures.

3.1. If any rule enforceable by the Director, including any rule which has been incorporated in the State Implementation Plan by the United States Environmental Protection Agency (USEPA) does not contain definitive compliance determination procedures or if a related rule establishing such compliance determination procedures has not been authorized and adopted, reference test methods and continuous emission monitoring requirements promulgated by USEPA pursuant to the federal Clean Air Act under 40 CFR Part 60, 40 CFR Part 61, 40 CFR Part 63, and 40 CFR Part 75, as in effect on July 1, 1994, applicable to a specific type or category of source or for a similar source, in conjunction with any other credible evidence shall be employed in determining whether a particular source complies with or violates the applicable emission limitation. The averaging provisions of Section 2.5 of Method 9 in Appendix A of 40 CFR Part 60 as in effect on July 1, 1994 shall only apply when specifically stated to be applicable in an effective rule.

### §45-38.4. Compliance Certification by a Source Owner or Operator.

4.1. For the purpose of submitting compliance certifications to the Director pursuant to any applicable rule or permit, an owner or operator of a source may use the following in addition to any compliance determination method applicable under any rule:

## 45CSR38

a. An enhanced monitoring protocol approved for the source pursuant to 40 CFR Part 64.

b. Any other monitoring method approved for the source pursuant to 40 CFR 70.6(a)(3) and 45CSR30 and incorporated into an enforceable operating permit.

### §45-38-5. Enforcement of Emission Standards or Limitations by the Director.

5.1. In enforcing emission limitations in any rule, including any rule which has been incorporated into the State Implementation Plan by USEPA, any credible evidence may be used by the Director for the purpose of establishing whether a person has violated or is in violation.

5.2. Information from the use of the following methods is presumptively credible evidence of whether a violation has occurred at a source:

a. An enhanced monitoring protocol approved for the source pursuant to 40 CFR Part 64.

b. A monitoring method approved for the source pursuant to 40 CFR 70.6(a)(3) and 45CSR30 and incorporated in an enforceable operating permit.

c. Compliance test methods specified in applicable rules or used in accordance with Section 3 of this rule.

5.3. The following testing, monitoring or information gathering methods are presumptively credible testing, monitoring or information gathering methods:

a. Any enforceable monitoring or testing methods, including those contained in 40 CFR Parts 51, 60, 61, 63 and 75.

b. Other testing, monitoring or information gathering methods that produce information comparable to that produced by any method listed in subsection 5.2 or 5.3.a.

### §45-38.6. Severability.

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

Reg 38

# WEST VIRGINIA REGISTER



Published by Ken Hechler, Secretary of State

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*Issue 27*

*July 8, 1994*

*Pages 952-1024*

*A Weekly Publication*

*Administrative Law Division*

*Judy Cooper*  
*Director*

*Missy Phalen*  
*Pam Reece*  
*Administrative Assistants*

*Secretary of State*  
*Administrative Law Division*  
*Bldg. 1, Suite 157K*  
*1900 Kanawha Blvd. E.*  
*Charleston, WV 25305-0770*

*(304)558-6000*

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LEGISLATIVE

SECRETARY OF STATE

RON RECHLER

ADMINISTRATIVE LAW DIVISION

FORM #1

FILED

JUN 6 4 37 PM '94

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

West Virginia Division of Environmental Protection  
AGENCY: Office of Air Quality TITLE NUMBER: 45CSR38  
RULE TYPE: Legislative CITE AUTHORITY: W. Va. Code §922-5-1 et seq.

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED:

TITLE OF RULE BEING AMENDED:

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 45CSR38

TITLE OF RULE BEING PROPOSED: "Provisions for Determination of Compliance  
with Air Quality Management Rules"

DATE OF PUBLIC HEARING: August 9, 1994 TIME: 9:00 a.m.

LOCATION OF PUBLIC HEARING: Office of Air Quality  
1556 Washington Street, East  
Charleston, WV 25311

COMMENTS LIMITED TO: ORAL WRITTEN, BOTH   
COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: Same as above.

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A BUREAU SUMMARY OF YOUR PROPOSAL

*[Signature]* 986



STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Building 6, Room 850, Capitol Complex  
Charleston, West Virginia 25305  
Telephone: (304) 558-7980  
Fax: (304) 558-8800

Charles Caporale  
Governor

Greches O. Levi  
Secretary

MEMORANDUM

DATE: June 17, 1994

TO: All Social Services Manual Holders

FROM: Tom Strawderman

RE: Pen and Ink Change - Chapter 20,000 Social Services Manual

OFFICE OF THE SECRETARY  
OFFICE OF THE SECRETARY  
OFFICE OF THE SECRETARY  
OFFICE OF THE SECRETARY  
OFFICE OF THE SECRETARY

Effective June 15, 1994, Section 20,230 is amended by ELIMINATING the statement "Children in an AFDC benefit group are financially eligible for Day Care Services, regardless of the income status of the primary recipient" from the policy. Please mark your manual accordingly.

JUNE 15, 1994 AND THEREAFTER, THE ELIGIBILITY DETERMINATION FOR DAY CARE MUST BE BASED ON THE SITUATION OF THE DESIGNATED PRIMARY RECIPIENT, WITHOUT REGARD TO THE AFDC OR BBI STATUS OF THE CHILD WHO IS IN THE DAY CARE SITUATION, AND THEREFORE, IS DESIGNATED AS SECONDARY RECIPIENT OF DAY CARE SERVICES.

In addition, some individuals are misinterpreting the policy regarding family situation or two married, or unmarried, adults live together, with one (1) or more children, for whom both adults share biological parentage. In this case, the family consists of the two adults and all children in the household who are the biological offspring of either of the adults. It is not necessary that both adults be the biological parent of more than one (1) of the children in the household.

Please let me know if you have questions.

TS:mb

CHRONOLOGICAL INDEX VOLUME XI ISSUE 27

Proposed Rules Filed for Public Hearing

<u>AGENCY</u>	<u>RULE/TYPE</u>	<u>AUTHORITY</u>	<u>HEARING/COMMENT PERIOD/LOCATION</u>
DEP-Air Quality (45-25)	To Prevent & Control Air Pollution From Hazardous Waste Treatment, Storage, or Disposal Facilities Legislative	§22-5-1	August 9, 1994, 9:00 a.m. Office of Air Quality 1558 Washington Street, E Charleston, WV 25311 Written Comments Same Address
DEP-Air Quality (45-36)	Requirements for Determining Conformity of Transportation Plans, Programs & Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act, To Applicable Air Quality Implementation Plans Legislative	§22-5-1	August 9, 1994, 9:00 a.m. Hearing & Written Comments Same as Above
DEP-Air Quality (45-37)	Provisions to Control Sulfur Dioxide Emissions & Ambient Air Quality Levels of Sulfur Dioxide in Hancock County Legislative	§22-5-1	August 9, 1994, 9:00 a.m. Hearing & Written Comments Same as Above
DEP-Air Quality (45-38)	Provisions for Determination of Compliance with Air Quality Management Rules Legislative	§22-5-1	August 9, 1994, 9:00 a.m. Hearing & Written Comments Same as Above
Health (64-14)	Personal Care Home Licensure Legislative	§16-5C-5	July 27, 1994, 10:00 a.m. Days Inn Conference Center Flatwoods, WV Written Comments Through August 1, 1994 Kay Howard Regulatory Development Dept of Health & Human Resources Bldg. 3, Rm. 265, Capitol Complex Charleston, WV 25305
Health (64-14)	Residential Board & Care Homes Legislative	§16-5H-2	July 27, 1994, 1:30 p.m. Hearing & Written Comments Same as Above

OTHER

FILED  
 JUN 6 4 30 PM '94  
 OFFICE OF WEST VIRGINIA  
 SECRETARIAT OF STATE

## NOTICE OF PUBLIC HEARING

On Tuesday, August 9, 1994, beginning at 9:00 a.m., the West Virginia Division of Environmental Protection will hold public hearings on the following proposed new legislative rules or rule amendments:

- 45CSR5 - To Prevent and Control Air Pollution from the Operation of Coal Preparation Plants and Coal Handling Operations (Amendments)
- 45CSR6 - To Prevent and Control Air Pollution from the Combustion of Refuse (Amendments)
- 45CSR25 - To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities (Amendments)
- 45CSR30 - Requirements for Determining Conformity of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act, To Applicable Air Quality Implementation Plans (New Rule)
- 45CSR37 - Provisions to Control Sulfur Dioxide Emissions and Ambient Air Quality Levels of Sulfur Dioxide in Hancock County (New Rule)
- 45CSR38 - Provisions for Determination of Compliance with Air Quality Management Rules (New Rule)

Upon authorization and promulgation, the above rules, with the exception of 45CSR25, will be submitted to the U. S. Environmental Protection Agency for EPA approval and incorporation into the West Virginia State Implementation Plan under the federal Clean Air Act, as amended. 45CSR25 will be submitted to U. S. EPA as a component part of the State's rules for program authorization relative to the hazardous waste management provisions under the federal Resource Conservation and Recovery Act.

After conclusion of the hearing on the proposed rules above, the Division of Environmental Protection will hold a hearing on proposed minor revisions to the maintenance plans associated with West Virginia's three redesignation requests currently pending before U. S. EPA for the Charleston, Parkersburg, and Huntington/Ashland ozone nonattainment areas. These revisions contain language which clarifies West Virginia's commitments for contingency measures that had been incorporated in the original November 13, 1992 Redesignation Request, the Update to the November 13, 1992 Redesignation Request, dated February 28, 1994 for the Charleston/Parkersburg areas and the Amendment to the November 12, 1992 Redesignation Request, dated November 12, 1993 for the Huntington/Ashland area.

The public hearing will be held in the Office of Air Quality's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written comments by all interested parties will be accepted from the date of this notice until the close of the hearing and made part of the record. Oral comments will be accepted at the public hearing and will be limited to five minutes per person per rule. The period for public comment will end at the close of the hearing.

Copies of the proposed legislative rules may be obtained from the Office of Secretary of State or may be reviewed during normal business hours at the following location: Library of the Office of Air Quality located at the address below on and after July 8, 1994.

Please provide any written comments or questions to the following contact and offices:

G. Dale Farley  
 Office of Air Quality  
 Division of Environmental Protection  
 1558 Washington Street, East  
 Charleston, WV 25311-2599

FILED

6 4 38 PM '94

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

NOTICE OF PUBLIC HEARING

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- 45CSR25 - To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities (Amendments)
- 45CSR36 - Requirements for Determining Conformity of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act, To Applicable Air Quality Implementation Plans (New Rule)
- 45CSR37 - Provisions to Control Sulfur Dioxide Emissions and Ambient Air Quality Levels of Sulfur Dioxide in Hancock County (New Rule)
- 45CSR38 - Provisions for Determination of Compliance with Air Quality Management Rules (New Rule)

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Please provide any written comments or questions to the following contact and office:

G. Dale Farley  
Office of Air Quality  
Division of Environmental Protection  
1558 Washington Street, East  
Charleston, WV 25311-2599



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES  
DIVISION OF ENVIRONMENTAL PROTECTION  
OFFICE OF AIR QUALITY

Gaston Caperton  
Governor

1558 Washington Street, East  
Charleston, WV 25311-2599

David C. Callaghan  
Director  
Eli McCoy  
Deputy Director

July 1, 1994

The Wheeling News-Register and  
Intelligencer  
Legal Ad Department  
1500 Main Street  
Wheeling, WV 26003

Dear Legal Ad Department:

Please publish the enclosed "Notice of Public Hearing" as soon as possible as a Class I legal advertisement. The publication must occur no later than Friday, July 8, 1994 and must not be published on Sunday as a matter of law. If you have any questions regarding this matter, please contact Tammy Mowrer at 558-2275.

You may submit your invoice and a tear sheet to the attention of Ms. Nadine Sitton, 1558 Washington Street, East, Charleston, West Virginia 25311.

Sincerely yours,

Dale Farley  
Chief, Office of Air Quality

DF/tlm

Enclosure



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES  
DIVISION OF ENVIRONMENTAL PROTECTION

1558 Washington Street, East  
Charleston, WV 25311-2599

Gaston Caperton  
Governor

John M. Ranson  
Cabinet Secretary

David C. Callaghan  
Director

Ann A. Spaner  
Deputy Director

July 7, 1994

Mr. Tim Carroll  
Office of Air Quality  
Northern Panhandle Regional Office  
1911 Warwood Avenue  
Wheeling, West Virginia 26003

Dear Mr. Carroll:

On Tuesday, August 9, 1994 the West Virginia Air Pollution Control Commission will hold a public hearing on the following proposed legislative rules: 45CSR5, 45CSR6, 45CSR25, 45CSR36, 45CSR37, and 45CSR38. Please retain the enclosed documents for public review until after the August 9th hearing. Also, please have any interested party sign the enclosed register and return the register and any correspondence you may have regarding the proposed legislative rules.

Thank you very much for your cooperation and assistance in this matter. If you have any questions, please direct them to Tammy Mowrer at (304) 558-2275.

Sincerely yours,

Dale Farley  
Chief, Office of Air Quality

DF/tlm

Enclosures

## NOTICE OF PUBLIC HEARING

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- 45CSR25 - To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities (Amendments)
- 45CSR36 - Requirements for Determining Conformity of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act, To Applicable Air Quality Implementation Plans (New Rule)
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- 45CSR38 - Provisions for Determination of Compliance with Air Quality Management Rules (New Rule)

Upon authorization and promulgation, the above rules, with the exception of 45CSR25, will be submitted to the U. S. Environmental Protection Agency for EPA approval and incorporation into the West Virginia State Implementation Plan under the federal Clean Air Act, as amended. 45CSR25 will be submitted to U. S. EPA as a component part of the State's rules for program authorization relative to the hazardous waste management provisions under the federal Resource Conservation and Recovery Act.

After conclusion of the hearing on the proposed rules above, the Division of Environmental Protection will hold a hearing on proposed minor revisions to the maintenance plans associated with West Virginia's three redesignation requests currently pending before U. S. EPA for the Charleston, Parkersburg, and Huntington/Ashland ozone nonattainment areas. These revisions contain language which clarifies West Virginia's commitments for contingency measures that had been incorporated in the original November 13, 1992 Redesignation Request, the Update to the November 13, 1992 Redesignation Request, dated February 28, 1994 for the Charleston/Parkersburg areas and the Amendment to the November 12, 1992 Redesignation Request, dated November 12, 1993 for the Huntington/Ashland area.

The public hearing will be held in the Office of Air Quality's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written comments by all interested parties will be accepted from the date of this notice until the close of the hearing and made part of the record. Oral comments will be accepted at the public hearing and will be limited to five minutes per person per rule. The period for public comment will end at the close of the hearing.

Copies of the proposed legislative rules may be obtained from the Office of Secretary of State or may be reviewed during normal business hours at the following location: Office of Air Quality, Northern Panhandle Regional Office, 1911 Warwood Avenue, Wheeling, WV on and after July 8, 1994.

Please provide any written comments or questions to the following contact and office:

G. Dale Farley  
Office of Air Quality  
Division of Environmental Protection  
1558 Washington Street, East  
Charleston, WV 25311-2599



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES  
DIVISION OF ENVIRONMENTAL PROTECTION

Gaston Caperton  
Governor

OFFICE OF AIR QUALITY  
1558 Washington Street, East  
Charleston, WV 25311-2599

David C. Callaghan  
Director  
Eli McCoy  
Deputy Director

July 1, 1994

The Parkersburg News  
Legal Ad Department  
519 Juliana Street  
Parkersburg, WV 26102

Dear Legal Ad Department:

Please publish the enclosed "Notice of Public Hearing" as soon as possible as a Class I legal advertisement. The publication must occur no later than Friday, July 8, 1994 and must not be published on Sunday as a matter of law. If you have any questions regarding this matter, please contact Tammy Mowrer at 558-2275.

You may submit your invoice and a tear sheet to the attention of Ms. Nadine Sitton, 1558 Washington Street, East, Charleston, West Virginia 25311.

Sincerely yours,

Dale Farley  
Chief, Office of Air Quality

DF/tlm

Enclosure



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES  
DIVISION OF ENVIRONMENTAL PROTECTION

1558 Washington Street, East  
Charleston, WV 25311-2599

Gaston Caperton  
Governor

John M. Ranson  
Cabinet Secretary

David C. Callaghan  
Director

Ann A. Spaner  
Deputy Director

July 7, 1994

Ms. Dorothy Chittum  
Librarian  
Parkersburg/Wood County Public Library  
3100 Emerson Avenue  
Parkersburg, West Virginia 26104

Dear Ms. Chittum:

On Tuesday, August 9, 1994 the West Virginia Air Pollution Control Commission will hold a public hearing on the following proposed legislative rules: 45CSR5, 45CSR6, 45CSR25, 45CSR36, 45CSR37, and 45CSR38. Please retain the enclosed documents for public review until after the August 9th hearing. Also, please have any interested party sign the enclosed register and return the register and any correspondence you may have regarding the proposed legislative rules.

Thank you very much for your cooperation and assistance in this matter. If you have any questions, please direct them to Tammy Mowrer at (304) 558-2275.

Sincerely yours,

Dale Farley  
Chief, Office of Air Quality

DF/tlm

Enclosures

## NOTICE OF PUBLIC HEARING

On Tuesday, August 9, 1994, beginning at 9:00 a.m., the West Virginia Division of Environmental Protection will hold public hearings on the following proposed new legislative rules or rule amendments:

- 45CSR5 - To Prevent and Control Air Pollution from the Operation of Coal Preparation Plants and Coal Handling Operations (Amendments)
- 45CSR6 - To Prevent and Control Air Pollution from the Combustion of Refuse (Amendments)
- 45CSR25 - To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities (Amendments)
- 45CSR36 - Requirements for Determining Conformity of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act, To Applicable Air Quality Implementation Plans (New Rule)
- 45CSR37 - Provisions to Control Sulfur Dioxide Emissions and Ambient Air Quality Levels of Sulfur Dioxide in Hancock County (New Rule)
- 45CSR38 - Provisions for Determination of Compliance with Air Quality Management Rules (New Rule)

Upon authorization and promulgation, the above rules, with the exception of 45CSR25, will be submitted to the U. S. Environmental Protection Agency for EPA approval and incorporation into the West Virginia State Implementation Plan under the federal Clean Air Act, as amended. 45CSR25 will be submitted to U. S. EPA as a component part of the State's rules for program authorization relative to the hazardous waste management provisions under the federal Resource Conservation and Recovery Act.

After conclusion of the hearing on the proposed rules above, the Division of Environmental Protection will hold a hearing on proposed minor revisions to the maintenance plans associated with West Virginia's three redesignation requests currently pending before U. S. EPA for the Charleston, Parkersburg, and Huntington/Ashland ozone nonattainment areas. These revisions contain language which clarifies West Virginia's commitments for contingency measures that had been incorporated in the original November 13, 1992 Redesignation Request, the Update to the November 13, 1992 Redesignation Request, dated February 28, 1994 for the Charleston/Parkersburg areas and the Amendment to the November 12, 1992 Redesignation Request, dated November 12, 1993 for the Huntington/Ashland area.

The public hearing will be held in the Office of Air Quality's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written comments by all interested parties will be accepted from the date of this notice until the close of the hearing and made part of the record. Oral comments will be accepted at the public hearing and will be limited to five minutes per person per rule. The period for public comment will end at the close of the hearing.

Copies of the proposed legislative rules may be obtained from the Office of Secretary of State or may be reviewed during normal business hours at the following location: Parkersburg/Wood County Public Library, 3100 Emerson Avenue, Parkersburg, West Virginia on and after July 8, 1994.

Please provide any written comments or questions to the following contact and office:

G. Dale Farley  
Office of Air Quality  
Division of Environmental Protection  
1558 Washington Street, East  
Charleston, WV 25311-2599



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES  
DIVISION OF ENVIRONMENTAL PROTECTION  
OFFICE OF AIR QUALITY

Gaston Caperton  
Governor

1558 Washington Street, East  
Charleston, WV 25311-2599

David C. Callaghan  
Director  
Elf McCoy  
Deputy Director

July 1, 1994

The Herald-Dispatch  
Legal Ad Department  
P. O. Box 2017  
Huntington, WV 25720

Dear Legal Ad Department:

Please publish the enclosed "Notice of Public Hearing" as soon as possible as a Class I legal advertisement. The publication must occur no later than Friday, July 8, 1994 and must not be published on Sunday as a matter of law. If you have any questions regarding this matter, please contact Tammy Mowrer at 558-2275.

You may submit your invoice and a tear sheet to the attention of Ms. Nadine Sitton, 1558 Washington Street, East, Charleston, West Virginia 25311.

Sincerely yours,

Dale Farley  
Chief, Office of Air Quality

DF/tlm

Enclosure



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES  
DIVISION OF ENVIRONMENTAL PROTECTION

1558 Washington Street, East  
Charleston, WV 25311-2599

Gaston Caperton  
Governor

John M. Ranson  
Cabinet Secretary

David C. Callaghan  
Director

Ann A. Spaner  
Deputy Director

July 7, 1994

Mr. Matt Onion  
Cabell County Public Library  
455 9th Street Plaza  
Huntington, West Virginia 25701

Dear Mr. Onion:

On Tuesday, August 9, 1994 the West Virginia Air Pollution Control Commission will hold a public hearing on the following proposed legislative rules: 45CSR5, 45CSR6, 45CSR25, 45CSR36, 45CSR37, and 45CSR38. Please retain the enclosed documents for public review until after the August 9th hearing. Also, please have any interested party sign the enclosed register and return the register and any correspondence you may have regarding the proposed legislative rules.

Thank you very much for your cooperation and assistance in this matter. If you have any questions, please direct them to Tammy Mowrer at (304) 558-2275.

Sincerely yours,

Dale Farley  
Chief, Office of Air Quality

DF/tlm

Enclosures

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On Tuesday, August 9, 1994, beginning at 9:00 a.m., the West Virginia Division of Environmental Protection will hold public hearings on the following proposed new legislative rules or rule amendments:

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- 45CSR36 - Requirements for Determining Conformity of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act, To Applicable Air Quality Implementation Plans (New Rule)
- 45CSR37 - Provisions to Control Sulfur Dioxide Emissions and Ambient Air Quality Levels of Sulfur Dioxide in Hancock County (New Rule)
- 45CSR38 - Provisions for Determination of Compliance with Air Quality Management Rules (New Rule)

Upon authorization and promulgation, the above rules, with the exception of 45CSR25, will be submitted to the U. S. Environmental Protection Agency for EPA approval and incorporation into the West Virginia State Implementation Plan under the federal Clean Air Act, as amended. 45CSR25 will be submitted to U. S. EPA as a component part of the State's rules for program authorization relative to the hazardous waste management provisions under the federal Resource Conservation and Recovery Act.

After conclusion of the hearing on the proposed rules above, the Division of Environmental Protection will hold a hearing on proposed minor revisions to the maintenance plans associated with West Virginia's three redesignation requests currently pending before U. S. EPA for the Charleston, Parkersburg, and Huntington/Ashland ozone nonattainment areas. These revisions contain language which clarifies West Virginia's commitments for contingency measures that had been incorporated in the original November 13, 1992 Redesignation Request, the Update to the November 13, 1992 Redesignation Request, dated February 28, 1994 for the Charleston/Parkersburg areas and the Amendment to the November 12, 1992 Redesignation Request, dated November 12, 1993 for the Huntington/Ashland area.

The public hearing will be held in the Office of Air Quality's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written comments by all interested parties will be accepted from the date of this notice until the close of the hearing and made part of the record. Oral comments will be accepted at the public hearing and will be limited to five minutes per person per rule. The period for public comment will end at the close of the hearing.

Copies of the proposed legislative rules may be obtained from the Office of Secretary of State or may be reviewed during normal business hours at the following location: Cabell County Public Library, 455 9th Street Plaza, Huntington, WV on and after July 8, 1994.

Please provide any written comments or questions to the following contact and office:

G. Dale Farley  
Office of Air Quality  
Division of Environmental Protection  
1558 Washington Street, East  
Charleston, WV 25311-2599



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES  
DIVISION OF ENVIRONMENTAL PROTECTION

Gaston Caperton,  
Governor

OFFICE OF AIR QUALITY

1558 Washington Street, East  
Charleston, WV 25311-2599

David C. Callaghan  
Director

Eli McCoy  
Deputy Director

July 1, 1994

Charleston Daily Mail  
Legal Ad Department  
1001 Virginia Street, East  
Charleston, WV 25301

Dear Legal Ad Department:

Please publish the enclosed "Notice of Public Hearing" as soon as possible as a Class I legal advertisement. The publication must occur no later than Friday, July 8, 1994 and must not be published on Sunday as a matter of law. If you have any questions regarding this matter, please contact Tammy Mowrer at 558-2275.

You may submit your invoice and a tear sheet to the attention of Ms. Nadine Sitton, 1558 Washington Street, East, Charleston, West Virginia 25311.

Sincerely yours,

Dale Farley  
Chief, Office of Air Quality

DF/tlm

Enclosure



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES  
DIVISION OF ENVIRONMENTAL PROTECTION

1558 Washington Street, East  
Charleston, WV 25311-2599

Gaston Caperton  
Governor

John M. Ranson  
Cabinet Secretary

David C. Callaghan  
Director

Ann A. Spaner  
Deputy Director

July 7, 1994

Ms. Jeanne Chandler  
Librarian  
Office of Air Quality  
1558 Washington Street, East  
Charleston, WV 25311

Dear Ms. Chandler:

On Tuesday, August 9, 1994 the West Virginia Air Pollution Control Commission will hold a public hearing on the following proposed legislative rules: 45CSR5, 45CSR6, 45CSR25, 45CSR36, 45CSR37, and 45CSR38. Please retain the enclosed documents for public review until after the August 9th hearing. Also, please have any interested party sign the enclosed register and return the register and any correspondence you may have regarding the proposed legislative rules.

Thank you very much for your cooperation and assistance in this matter. If you have any questions, please direct them to Tammy Mowrer at (304) 558-2275.

Sincerely yours,

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

Dale Farley  
Chief, Office of Air Quality

DF/tim

Enclosures

## NOTICE OF PUBLIC HEARING

On Tuesday, August 9, 1994, beginning at 9:00 a.m., the West Virginia Division of Environmental Protection will hold public hearings on the following proposed new legislative rules or rule amendments:

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- 45CSR36 - Requirements for Determining Conformity of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act, To Applicable Air Quality Implementation Plans (New Rule)
- 45CSR37 - Provisions to Control Sulfur Dioxide Emissions and Ambient Air Quality Levels of Sulfur Dioxide in Hancock County (New Rule)
- 45CSR38 - Provisions for Determination of Compliance with Air Quality Management Rules (New Rule)

Upon authorization and promulgation, the above rules, with the exception of 45CSR25, will be submitted to the U. S. Environmental Protection Agency for EPA approval and incorporation into the West Virginia State Implementation Plan under the federal Clean Air Act, as amended. 45CSR25 will be submitted to U. S. EPA as a component part of the State's rules for program authorization relative to the hazardous waste management provisions under the federal Resource Conservation and Recovery Act.

After conclusion of the hearing on the proposed rules above, the Division of Environmental Protection will hold a hearing on proposed minor revisions to the maintenance plans associated with West Virginia's three redesignation requests currently pending before U. S. EPA for the Charleston, Parkersburg, and Huntington/Ashland ozone nonattainment areas. These revisions contain language which clarifies West Virginia's commitments for contingency measures that had been incorporated in the original November 13, 1992 Redesignation Request, the Update to the November 13, 1992 Redesignation Request, dated February 28, 1994 for the Charleston/Parkersburg areas and the Amendment to the November 12, 1992 Redesignation Request, dated November 12, 1993 for the Huntington/Ashland area.

The public hearing will be held in the Office of Air Quality's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written comments by all interested parties will be accepted from the date of this notice until the close of the hearing and made part of the record. Oral comments will be accepted at the public hearing and will be limited to five minutes per person per rule. The period for public comment will end at the close of the hearing.

Copies of the proposed legislative rules may be obtained from the Office of Secretary of State or may be reviewed during normal business hours at the following location: Library of the Office of Air Quality located at the address below on and after July 8, 1994.

Please provide any written comments or questions to the following contact and office:

G. Dale Farley  
Office of Air Quality  
Division of Environmental Protection  
1558 Washington Street, East  
Charleston, WV 25311-2599



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES  
DIVISION OF ENVIRONMENTAL PROTECTION  
OFFICE OF AIR QUALITY

Gaston Caperton  
Governor

1558 Washington Street, East  
Charleston, WV 25311-2599

David C. Callaghan  
Director  
Eli McCoy  
Deputy Director

July 1, 1994

Beckley Register/Herald  
Legal Ad Department  
P. O. Drawer P  
Beckley, WV 25801

Dear Legal Ad Department:

Please publish the enclosed "Notice of Public Hearing" as soon as possible as a Class I legal advertisement. The publication must occur no later than Friday, July 8, 1994 and must not be published on Sunday as a matter of law. If you have any questions regarding this matter, please contact Tammy Mowrer at 558-2275.

You may submit your invoice and a tear sheet to the attention of Ms. Nadine Sitton, 1558 Washington Street, East, Charleston, West Virginia 25311.

Sincerely yours,

Dale Farley  
Chief, Office of Air Quality

DF/tlm

Enclosure



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES  
DIVISION OF ENVIRONMENTAL PROTECTION

1558 Washington Street, East  
Charleston, WV 25311-2599

Gaston Caperton  
Governor

John M. Ranson  
Cabinet Secretary

David C. Callaghan  
Director

Ann A. Spaner  
Deputy Director

July 7, 1994

Ms. Susan Vidovich  
Librarian  
Raleigh County Public Library  
P. O. Box 1876  
Beckley, West Virginia 25802

Dear Ms. Vidovich:

On Tuesday, August 9, 1994 the West Virginia Air Pollution Control Commission will hold a public hearing on the following proposed legislative rules: 45CSR5, 45CSR6, 45CSR25, 45CSR36, 45CSR37, and 45CSR38. Please retain the enclosed documents for public review until after the August 9th hearing. Also, please have any interested party sign the enclosed register and return the register and any correspondence you may have regarding the proposed legislative rules.

Thank you very much for your cooperation and assistance in this matter. If you have any questions, please direct them to Tammy Mowrer at (304) 558-2275.

Sincerely yours,

Dale Farley  
Chief, Office of Air Quality

DF/tlm

Enclosures

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- 45CSR37 - Provisions to Control Sulfur Dioxide Emissions and Ambient Air Quality Levels of Sulfur Dioxide in Hancock County (New Rule)
- 45CSR38 - Provisions for Determination of Compliance with Air Quality Management Rules (New Rule)

Upon authorization and promulgation, the above rules, with the exception of 45CSR25, will be submitted to the U. S. Environmental Protection Agency for EPA approval and incorporation into the West Virginia State Implementation Plan under the federal Clean Air Act, as amended. 45CSR25 will be submitted to U. S. EPA as a component part of the State's rules for program authorization relative to the hazardous waste management provisions under the federal Resource Conservation and Recovery Act.

After conclusion of the hearing on the proposed rules above, the Division of Environmental Protection will hold a hearing on proposed minor revisions to the maintenance plans associated with West Virginia's three redesignation requests currently pending before U. S. EPA for the Charleston, Parkersburg, and Huntington/Ashland ozone nonattainment areas. These revisions contain language which clarifies West Virginia's commitments for contingency measures that had been incorporated in the original November 13, 1992 Redesignation Request, the Update to the November 13, 1992 Redesignation Request, dated February 28, 1994 for the Charleston/Parkersburg areas and the Amendment to the November 12, 1992 Redesignation Request, dated November 12, 1993 for the Huntington/Ashland area.

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Copies of the proposed legislative rules may be obtained from the Office of Secretary of State or may be reviewed during normal business hours at the following location: Raleigh County Public Library, P. O. Box 1876, Beckley, WV on and after July 8, 1994.

Please provide any written comments or questions to the following contact and office:

G. Dale Farley  
Office of Air Quality  
Division of Environmental Protection  
1558 Washington Street, East  
Charleston, WV 25311-2599



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES  
DIVISION OF ENVIRONMENTAL PROTECTION

OFFICE OF AIR QUALITY

1558 Washington Street, East  
Charleston, WV 25311-2599

Gaston Caperton  
Governor

David C. Callaghan  
Director  
Eli McCoy  
Deputy Director

July 1, 1994

The Clarksburg Exponent  
Legal Ad Department  
P. O. Box 2000  
Clarksburg, WV 26301

Dear Legal Ad Department:

Please publish the enclosed "Notice of Public Hearing" as soon as possible as a Class I legal advertisement. The publication must occur no later than Friday, July 8, 1994 and must not be published on Sunday as a matter of law. If you have any questions regarding this matter, please contact Tammy Mowrer at 558-2275.

You may submit your invoice and a tear sheet to the attention of Ms. Nadine Sitton, 1558 Washington Street, East, Charleston, West Virginia 25311.

Sincerely yours,

Dale Farley  
Chief, Office of Air Quality

DF/tlm

Enclosure



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES  
DIVISION OF ENVIRONMENTAL PROTECTION

1558 Washington Street, East  
Charleston, WV 25311-2599

Gaston Caperton  
Governor

John M. Ranson  
Cabinet Secretary

David C. Callaghan  
Director

Ann A. Spaner  
Deputy Director

July 7, 1994

Ms. Donna Riggs  
Secretary  
WV Air Pollution Control Commission  
North Central Regional Office  
109 Adams Street, Room M-2  
Fairmont, West Virginia 26554-2800

Dear Ms. Riggs:

On Tuesday, August 9, 1994 the West Virginia Air Pollution Control Commission will hold a public hearing on the following proposed legislative rules: 45CSR5, 45CSR6, 45CSR25, 45CSR36, 45CSR37, and 45CSR38. Please retain the enclosed documents for public review until after the August 9th hearing. Also, please have any interested party sign the enclosed register and return the register and any correspondence you may have regarding the proposed legislative rules.

Thank you very much for your cooperation and assistance in this matter. If you have any questions, please direct them to Tammy Mowrer at (304) 558-2275.

Sincerely yours,

Dale Farley  
Chief, Office of Air Quality

DF/tlm

Enclosures

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- 45CSR38 - Provisions for Determination of Compliance with Air Quality Management Rules (New Rule)

Upon authorization and promulgation, the above rules, with the exception of 45CSR25, will be submitted to the U. S. Environmental Protection Agency for EPA approval and incorporation into the West Virginia State Implementation Plan under the federal Clean Air Act, as amended. 45CSR25 will be submitted to U. S. EPA as a component part of the State's rules for program authorization relative to the hazardous waste management provisions under the federal Resource Conservation and Recovery Act.

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Copies of the proposed legislative rules may be obtained from the Office of Secretary of State or may be reviewed during normal business hours at the following location: Office of Air Quality, North Central Regional Office, 517 1/2 East Park Avenue, Fairmont, WV on and after July 8, 1994.

Please provide any written comments or questions to the following contact and office:

G. Dale Farley  
Office of Air Quality  
Division of Environmental Protection  
1558 Washington Street, East  
Charleston, WV 25311-2599



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES  
DIVISION OF ENVIRONMENTAL PROTECTION  
OFFICE OF AIR QUALITY

Gaston Caperton  
Governor

1558 Washington Street, East  
Charleston, WV 25311-2599

David C. Callaghan  
Director  
Eli McCoy  
Deputy Director

July 1, 1994

Mineral Daily News Tribune  
Legal Ad Department  
P. O. Box 879  
Keyser, West Virginia 26726

Dear Legal Ad Department:

Please publish the enclosed "Notice of Public Hearing" as soon as possible as a Class I legal advertisement. The publication must occur no later than Friday, July 8, 1994 and must not be published on Sunday as a matter of law. If you have any questions regarding this matter, please contact Tammy Mowrer at 558-2275.

You may submit your invoice and a tear sheet to the attention of Ms. Nadine Sitton, 1558 Washington Street, East, Charleston, West Virginia 25311.

Sincerely yours,

Dale Farley  
Chief, Office of Air Quality

DF/tlm

Enclosure



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES  
DIVISION OF ENVIRONMENTAL PROTECTION

1558 Washington Street, East  
Charleston, WV 25311-2599

Gaston Caperton  
Governor

John M. Ranson  
Cabinet Secretary

David C. Callaghan  
Director

Ann A. Spaner  
Deputy Director

July 7, 1994

Ms. Karen Hiser  
Librarian  
Keyser-Mineral County Public Library  
105 North Main Street  
Keyser, West Virginia 26726

Dear Ms. Hiser:

On Tuesday, August 9, 1994 the West Virginia Air Pollution Control Commission will hold a public hearing on the following proposed legislative rules: 45CSR5, 45CSR6, 45CSR25, 45CSR36, 45CSR37, and 45CSR38. Please retain the enclosed documents for public review until after the August 9th hearing. Also, please have any interested party sign the enclosed register and return the register and any correspondence you may have regarding the proposed legislative rules.

Thank you very much for your cooperation and assistance in this matter. If you have any questions, please direct them to Tammy Mowrer at (304) 558-2275.

Sincerely yours,

Dale Farley  
Chief, Office of Air Quality

DF/tlm

Enclosures

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Copies of the proposed legislative rules may be obtained from the Office of Secretary of State or may be reviewed during normal business hours at the following location: Keyser-Mineral County Public Library, 105 North Main Street, Keyser, WV on and after July 8, 1994.

Please provide any written comments or questions to the following contact and office:

G. Dale Farley  
Office of Air Quality  
Division of Environmental Protection  
1558 Washington Street, East  
Charleston, WV 25311-2599



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES  
DIVISION OF ENVIRONMENTAL PROTECTION  
OFFICE OF AIR QUALITY

Gaston Caperton  
Governor

1558 Washington Street, East  
Charleston, WV 25311-2599

David C. Callaghan  
Director  
Eli McCoy  
Deputy Director

July 1, 1994

The Record Delta  
Legal Ad Department  
P. O. Box 550  
Buckhannon, WV 26201

Dear Legal Ad Department:

Please publish the enclosed "Notice of Public Hearing" as soon as possible as a Class I legal advertisement. The publication must occur no later than Friday, July 8, 1994 and must not be published on Sunday as a matter of law. If you have any questions regarding this matter, please contact Tammy Mowrer at 558-2275.

You may submit your invoice and a tear sheet to the attention of Ms. Nadine Sitton, 1558 Washington Street, East, Charleston, West Virginia 25311.

Sincerely yours,

Dale Farley  
Chief, Office of Air Quality

DF/tlm

Enclosure



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES  
DIVISION OF ENVIRONMENTAL PROTECTION

1558 Washington Street, East  
Charleston, WV 25311-2599

Gaston Caperton  
Governor

John M. Ranson  
Cabinet Secretary

David C. Callaghan  
Director

Ann A. Spaner  
Deputy Director

July 7, 1994

Ms. Ruth B. Six  
Librarian  
Gassaway Public Library  
100 Birch Street  
Gassaway, West Virginia 26624

Dear Ms. Six:

On Tuesday, August 9, 1994 the West Virginia Air Pollution Control Commission will hold a public hearing on the following proposed legislative rules: 45CSR5, 45CSR6, 45CSR25, 45CSR36, 45CSR37, and 45CSR38. Please retain the enclosed documents for public review until after the August 9th hearing. Also, please have any interested party sign the enclosed register and return the register and any correspondence you may have regarding the proposed legislative rules.

Thank you very much for your cooperation and assistance in this matter. If you have any questions, please direct them to Tammy Mowrer at (304) 558-2275.

Sincerely yours,

  
Dale Farley  
Chief, Office of Air Quality

DF/tlm

Enclosures

## NOTICE OF PUBLIC HEARING

On Tuesday, August 9, 1994, beginning at 9:00 a.m., the West Virginia Division of Environmental Protection will hold public hearings on the following proposed new legislative rules or rule amendments:

- 45CSR5 - To Prevent and Control Air Pollution from the Operation of Coal Preparation Plants and Coal Handling Operations (Amendments)
- 45CSR6 - To Prevent and Control Air Pollution from the Combustion of Refuse (Amendments)
- 45CSR25 - To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities (Amendments)
- 45CSR36 - Requirements for Determining Conformity of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act, To Applicable Air Quality Implementation Plans (New Rule)
- 45CSR37 - Provisions to Control Sulfur Dioxide Emissions and Ambient Air Quality Levels of Sulfur Dioxide in Hancock County (New Rule)
- 45CSR38 - Provisions for Determination of Compliance with Air Quality Management Rules (New Rule)

Upon authorization and promulgation, the above rules, with the exception of 45CSR25, will be submitted to the U. S. Environmental Protection Agency for EPA approval and incorporation into the West Virginia State Implementation Plan under the federal Clean Air Act, as amended. 45CSR25 will be submitted to U. S. EPA as a component part of the State's rules for program authorization relative to the hazardous waste management provisions under the federal Resource Conservation and Recovery Act.

After conclusion of the hearing on the proposed rules above, the Division of Environmental Protection will hold a hearing on proposed minor revisions to the maintenance plans associated with West Virginia's three redesignation requests currently pending before U. S. EPA for the Charleston, Parkersburg, and Huntington/Ashland ozone nonattainment areas. These revisions contain language which clarifies West Virginia's commitments for contingency measures that had been incorporated in the original November 13, 1992 Redesignation Request, the Update to the November 13, 1992 Redesignation Request, dated February 28, 1994 for the Charleston/Parkersburg areas and the Amendment to the November 12, 1992 Redesignation Request, dated November 12, 1993 for the Huntington/Ashland area.

The public hearing will be held in the Office of Air Quality's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written comments by all interested parties will be accepted from the date of this notice until the close of the hearing and made part of the record. Oral comments will be accepted at the public hearing and will be limited to five minutes per person per rule. The period for public comment will end at the close of the hearing.

Copies of the proposed legislative rules may be obtained from the Office of Secretary of State or may be reviewed during normal business hours at the following location: Gassaway Public Library, 100 Birch Street, Gassaway, WV on and after July 8, 1994.

Please provide any written comments or questions to the following contact and office:

G. Dale Farley  
Office of Air Quality  
Division of Environmental Protection  
1558 Washington Street, East  
Charleston, WV 25311-2599



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES  
DIVISION OF ENVIRONMENTAL PROTECTION  
OFFICE OF AIR QUALITY

Gaston Caperton  
Governor

1558 Washington Street, East  
Charleston, WV 25311-2599

David C. Callaghan  
Director  
Eli McCoy  
Deputy Director

July 1, 1994

Elkins Inter-Mountain  
Legal Ad Department  
P. O. Box 1339  
Elkins, WV 26241

Dear Legal Ad Department:

Please publish the enclosed "Notice of Public Hearing" as soon as possible as a Class I legal advertisement. The publication must occur no later than Friday, July 8, 1994 and must not be published on Sunday as a matter of law. If you have any questions regarding this matter, please contact Tammy Mowrer at 558-2275.

You may submit your invoice and a tear sheet to the attention of Ms. Nadine Sitton, 1558 Washington Street, East, Charleston, West Virginia 25311.

Sincerely yours,

Dale Farley  
Chief, Office of Air Quality

DF/tlm

Enclosure



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES  
DIVISION OF ENVIRONMENTAL PROTECTION

1558 Washington Street, East  
Charleston, WV 25311-2599

Gaston Caperton  
Governor

John M. Ranson  
Cabinet Secretary

David C. Callaghan  
Director

Ann A. Spaner  
Deputy Director

July 7, 1994

Elkins-Randolph County Public Library  
c/o Librarian  
416 Davis Avenue  
Elkins, West Virginia 26241

Dear Librarian:

On Tuesday, August 9, 1994 the West Virginia Air Pollution Control Commission will hold a public hearing on the following proposed legislative rules: 45CSR5, 45CSR6, 45CSR25, 45CSR36, 45CSR37, and 45CSR38. Please retain the enclosed documents for public review until after the August 9th hearing. Also, please have any interested party sign the enclosed register and return the register and any correspondence you may have regarding the proposed legislative rules.

Thank you very much for your cooperation and assistance in this matter. If you have any questions, please direct them to Tammy Mowrer at (304) 558-2275.

Sincerely yours,

Dale Farley  
Chief, Office of Air Quality

DF/tlm

Enclosures

## NOTICE OF PUBLIC HEARING

On Tuesday, August 9, 1994, beginning at 9:00 a.m., the West Virginia Division of Environmental Protection will hold public hearings on the following proposed new legislative rules or rule amendments:

- 45CSR5 - To Prevent and Control Air Pollution from the Operation of Coal Preparation Plants and Coal Handling Operations (Amendments)
- 45CSR6 - To Prevent and Control Air Pollution from the Combustion of Refuse (Amendments)
- 45CSR25 - To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities (Amendments)
- 45CSR36 - Requirements for Determining Conformity of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act, To Applicable Air Quality Implementation Plans (New Rule)
- 45CSR37 - Provisions to Control Sulfur Dioxide Emissions and Ambient Air Quality Levels of Sulfur Dioxide in Hancock County (New Rule)
- 45CSR38 - Provisions for Determination of Compliance with Air Quality Management Rules (New Rule)

Upon authorization and promulgation, the above rules, with the exception of 45CSR25, will be submitted to the U. S. Environmental Protection Agency for EPA approval and incorporation into the West Virginia State Implementation Plan under the federal Clean Air Act, as amended. 45CSR25 will be submitted to U. S. EPA as a component part of the State's rules for program authorization relative to the hazardous waste management provisions under the federal Resource Conservation and Recovery Act.

After conclusion of the hearing on the proposed rules above, the Division of Environmental Protection will hold a hearing on proposed minor revisions to the maintenance plans associated with West Virginia's three redesignation requests currently pending before U. S. EPA for the Charleston, Parkersburg, and Huntington/Ashland ozone nonattainment areas. These revisions contain language which clarifies West Virginia's commitments for contingency measures that had been incorporated in the original November 13, 1992 Redesignation Request, the Update to the November 13, 1992 Redesignation Request, dated February 28, 1994 for the Charleston/Parkersburg areas and the Amendment to the November 12, 1992 Redesignation Request, dated November 12, 1993 for the Huntington/Ashland area.

The public hearing will be held in the Office of Air Quality's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written comments by all interested parties will be accepted from the date of this notice until the close of the hearing and made part of the record. Oral comments will be accepted at the public hearing and will be limited to five minutes per person per rule. The period for public comment will end at the close of the hearing.

Copies of the proposed legislative rules may be obtained from the Office of Secretary of State or may be reviewed during normal business hours at the following location: Elkins-Randolph County Public Library, 416 Davis Avenue, Elkins, WV on and after July 8, 1994.

Please provide any written comments or questions to the following contact and office:

G. Dale Farley  
Office of Air Quality  
Division of Environmental Protection  
1558 Washington Street, East  
Charleston, WV 25311-2599



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES  
DIVISION OF ENVIRONMENTAL PROTECTION  
OFFICE OF AIR QUALITY

Gaston Caperton  
Governor

1558 Washington Street, East  
Charleston, WV 25311-2599

David C. Callaghan  
Director  
Eli McCoy  
Deputy Director

July 1, 1994

The Evening/Weekend Journal  
Legal Ad Department  
207 West King Street  
Martinsburg, WV 25401

Dear Legal Ad Department:

Please publish the enclosed "Notice of Public Hearing" as soon as possible as a Class I legal advertisement. The publication must occur no later than Friday, July 8, 1994 and must not be published on Sunday as a matter of law. If you have any questions regarding this matter, please contact Tammy Mowrer at 558-2275.

You may submit your invoice and a tear sheet to the attention of Ms. Nadine Sitton, 1558 Washington Street, East, Charleston, West Virginia 25311.

Sincerely yours,

Dale Farley  
Chief, Office of Air Quality

DF/tlm

Enclosure



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES  
DIVISION OF ENVIRONMENTAL PROTECTION

1558 Washington Street, East  
Charleston, WV 25311-2599

Gaston Caperton  
Governor

John M. Ranson  
Cabinet Secretary

David C. Callaghan  
Director

Ann A. Spaner  
Deputy Director

July 7, 1994

Ms. Peggy Y. Batten  
Librarian  
Martinsburg-Berkeley County Public Library  
101 West King Street  
Martinsburg, West Virginia 25401

Dear Ms. Batten:

On Tuesday, August 9, 1994 the West Virginia Air Pollution Control Commission will hold a public hearing on the following proposed legislative rules: 45CSR5, 45CSR6, 45CSR25, 45CSR36, 45CSR37, and 45CSR38. Please retain the enclosed documents for public review until after the August 9th hearing. Also, please have any interested party sign the enclosed register and return the register and any correspondence you may have regarding the proposed legislative rules.

Thank you very much for your cooperation and assistance in this matter. If you have any questions, please direct them to Tammy Mowrer at (304) 558-2275.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Dale Farley".

Dale Farley  
Chief, Office of Air Quality

DF/tlm

Enclosures



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES  
DIVISION OF ENVIRONMENTAL PROTECTION

1558 Washington Street, East  
Charleston, WV 25311-2599

Gaston Caperton  
Governor

John M. Ranson  
Cabinet Secretary

David C. Callaghan  
Director

Ann A. Spaner  
Deputy Director

July 7, 1994

Mr. Richard Poling  
Office of Air Quality  
Eastern Panhandle Regional Office  
P. O. Box 99  
Burlington, West Virginia 26710

Dear Mr. Poling:

On Tuesday, August 9, 1994 the West Virginia Air Pollution Control Commission will hold a public hearing on the following proposed legislative rules: 45CSR5, 45CSR6, 45CSR25, 45CSR36, 45CSR37, and 45CSR38. Please retain the enclosed documents for public review until after the August 9th hearing. Also, please have any interested party sign the enclosed register and return the register and any correspondence you may have regarding the proposed legislative rules.

Thank you very much for your cooperation and assistance in this matter. If you have any questions, please direct them to Tammy Mowrer at (304) 558-2275.

Sincerely yours,

Dale Farley  
Chief, Office of Air Quality

DF/tlm

Enclosures

## NOTICE OF PUBLIC HEARING

On Tuesday, August 9, 1994, beginning at 9:00 a.m., the West Virginia Division of Environmental Protection will hold public hearings on the following proposed new legislative rules or rule amendments:

- 45CSR5 - To Prevent and Control Air Pollution from the Operation of Coal Preparation Plants and Coal Handling Operations (Amendments)
- 45CSR6 - To Prevent and Control Air Pollution from the Combustion of Refuse (Amendments)
- 45CSR25 - To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities (Amendments)
- 45CSR36 - Requirements for Determining Conformity of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act, To Applicable Air Quality Implementation Plans (New Rule)
- 45CSR37 - Provisions to Control Sulfur Dioxide Emissions and Ambient Air Quality Levels of Sulfur Dioxide in Hancock County (New Rule)
- 45CSR38 - Provisions for Determination of Compliance with Air Quality Management Rules (New Rule)

Upon authorization and promulgation, the above rules, with the exception of 45CSR25, will be submitted to the U. S. Environmental Protection Agency for EPA approval and incorporation into the West Virginia State Implementation Plan under the federal Clean Air Act, as amended. 45CSR25 will be submitted to U. S. EPA as a component part of the State's rules for program authorization relative to the hazardous waste management provisions under the federal Resource Conservation and Recovery Act.

After conclusion of the hearing on the proposed rules above, the Division of Environmental Protection will hold a hearing on proposed minor revisions to the maintenance plans associated with West Virginia's three redesignation requests currently pending before U. S. EPA for the Charleston, Parkersburg, and Huntington/Ashland ozone nonattainment areas. These revisions contain language which clarifies West Virginia's commitments for contingency measures that had been incorporated in the original November 13, 1992 Redesignation Request, the Update to the November 13, 1992 Redesignation Request, dated February 28, 1994 for the Charleston/Parkersburg areas and the Amendment to the November 12, 1992 Redesignation Request, dated November 12, 1993 for the Huntington/Ashland area.

The public hearing will be held in the Office of Air Quality's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written comments by all interested parties will be accepted from the date of this notice until the close of the hearing and made part of the record. Oral comments will be accepted at the public hearing and will be limited to five minutes per person per rule. The period for public comment will end at the close of the hearing.

Copies of the proposed legislative rules may be obtained from the Office of Secretary of State or may be reviewed during normal business hours at the following locations: Martinsburg-Berkeley County Public Library, 101 King Street, Martinsburg, WV and the Office of Air Quality's Burlington Office, P. O. Box 99, Burlington, WV on and after July 8, 1994.

Please provide any written comments or questions to the following contact and office:

G. Dale Farley  
Office of Air Quality  
Division of Environmental Protection  
1558 Washington Street, East  
Charleston, WV 25311-2599

I, as an officer of the News-Tribune, a daily newspaper published at Keyser, Mineral County, West Virginia, hereby certify that the

Division  
of Environmental Protection  
in the case of Notice of

Public Hearing: New Legislative  
Rules

vs. \_\_\_\_\_

a copy whereof is hereto annexed has been published for  
1 consecutive  
day

in said NEWS-TRIBUNE, the first publication being on the  
7th day of  
July

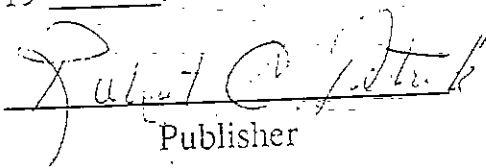
19 94

Given under my hand at Keyser this

7th

day of July

19 94

  
Publisher

Publisher's Fee

\$31.50

### NOTICE OF PUBLIC HEARING

On Tuesday, August 9, 1994, beginning at 9:00 a.m., the West Virginia Division of Environmental Protection will hold public hearings on the following proposed new legislative rules or rule amendments:

45CSR5 - To Prevent and Control Air Pollution from the Operation of Coal Preparation Plants and Coal Handling Operations (Amendments).

45CSR6 - To Prevent and Control Air Pollution from the Combustion of Refuse (Amendments).

45CSR25 - To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities (Amendments).

45CSR36 - Requirements for Determining Conformity of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act, To Applicable Air Quality Implementation Plans (New Rule).

45CSR37 - Provisions to Control Sulfur Dioxide Emissions and Ambient Air Quality Levels of Sulfur Dioxide in Hancock County (New Rule).

45CSR38 - Provisions for Determination of Compliance with Air Quality Management Rules (New Rule).

Upon authorization and promulgation, the above rules, with the exception of 45CSR25, will be submitted to the U.S. Environmental Protection Agency for EPA approval and incorporation into the West Virginia State Implementation Plan under the federal Clean Air Act, as amended. 45CSR25 will be submitted to U.S. EPA as a component part of the State's rules for program authorization relative to the hazardous waste management provisions under the federal Resource Conservation and Recovery Act.

After conclusion of the hearing on the proposed rules above, the Division of Environmental Protection will hold a hearing on proposed minor revisions to the maintenance plans associated with West Virginia's three redesignation requests currently pending before U.S. EPA for the Charleston, Parkersburg, and Huntington/Ashland ozone nonattainment areas. These revisions contain language which clarifies West Virginia's commitments for contingency measures that had been incorporated in the original November 13, 1992 Redesignation Request, the Update to the November 13, 1992 Redesignation Request, dated February 28, 1994 for the Charleston/Parkersburg areas and the Amendment to the November 12, 1992 Redesignation Request, dated November 12, 1993 for the Huntington/Ashland area.

The public hearing will be held in the Office of Air Quality's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written comments by all interested parties will be accepted from the date of this notice until the close of the hearing and made part of the record. Oral comments will be accepted at the public hearing and will be limited to five minutes per person per rule. The period for public comment will end at the close of the hearing.

Copies of the proposed legislative rules may be obtained from the Office of Secretary of State or may be reviewed during normal business hours at the following location: Keyser-Mineral County Public Library, 105 North Main Street, Keyser, WV on and after July 8, 1994.

Please provide any written comments or questions to the following contact and office: G. Dale Farley, Office of Air Quality, Division of Environmental Protection, 1558 Washington Street, East, Charleston, WV 25311-2599.

# State of West Virginia, County of Randolph, ss.

## NOTICE OF PUBLIC HEARING

On Tuesday, August 9, 1994, beginning at 9:00 a.m., the West Virginia Division of Environmental Protection will hold public hearings on the following proposed new legislative rules or rule amendments:

45CSR5—To Prevent and Control Air Pollution from the Operation of Coal Preparation Plants and Coal Handling Operations (Amendments)

45CSR6—To Prevent and Control Air Pollution from the Combustion of Refuse (Amendments)

45CSR25—To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities (Amendments)

45CSR36—Requirements for Determining Conformity of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act, To Applicable Air Quality Implementation Plans (New Rule)

45CSR37—Provisions to Control Sulfur Dioxide Emissions and Ambient Air Quality Levels of Sulfur Dioxide in Hancock County (New Rule)

45CSR38—Provisions for Determination of Compliance with Air Quality Management Rules (New Rule)

Upon authorization and promulgation, the above rules, with the exception of 45CSR25, will be submitted to the U.S. Environmental Protection Agency for EPA approval and incorporation into the West Virginia State Implementation Plan under the federal Clean Air Act, as amended. 45CSR25 will be submitted to U.S. EPA as a component part of the State's rules for program authorization relative to the hazardous waste management provisions under the federal Resource Conservation and Recovery Act.

After conclusion of the hearing on the proposed rules above, the Division of Environmental Protection will hold a hearing on proposed minor revisions to the maintenance plans, associated with West Virginia's three redesignation requests currently pending before U.S. EPA for the Charleston, Parkersburg, and Huntington/Ashland ozone nonattainment areas. These revisions contain language which clarifies West Virginia's commitments for contingency measures that had been incorporated in the original November 13, 1992 Redesignation Request, the Update to the November 13, 1992 Redesignation Request, dated February 28, 1994 for the Charleston/Parkersburg areas and the Amendment to the November 12, 1992 Redesignation Request, dated November 12, 1993 for the Huntington/Ashland area.

The public hearing will be held in the Office of Air Quality's Conference Room at 1553 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written comments by all interested parties will be accepted from the date of this notice until the close of the hearing and made part of the record. Oral comments will be accepted at the public hearing and will be limited to five minutes per person per rule. The period for public comment will end at the close of the hearing.

Copies of the proposed legislative rules may be obtained from the Office of Secretary of State or may be reviewed during normal business hours at the following location: Elkins-Randolph County Public Library, 416 Davis Avenue, Elkins, WV on and after July 8, 1994.

Please provide any written comments or questions to the following contact and office:

G. Dale Farley  
Office of Air Quality  
Division of Environmental Protection  
1553 Washington Street, East  
Charleston, WV 25311-2500

I, James Hoffman, Publisher of THE INTER-MOUNTAIN, a newspaper published at Elkins, in said county, do hereby certify that the annexed advertisement was published on the following dates:

July 07  
19 94 as required by law.

Given under my hand this 07 day of July 19, 94

James Hoffman  
Publisher

Printer's Fee: \$ 41.69

re me this 07 day of July 19 94

Shirley A. Menead  
Notary Public

15 day of April 19 2002

NOTICE OF PUBLIC HEARING

On Tuesday, August 2, 1994, beginning at 9:00 a.m., the West Virginia Division of Environmental Protection will hold public hearings on the following proposed new legislative rules or rule amendments:

45CSR5 - To Prevent and Control Air Pollution from the Operation of Coal Preparation Plants and Coal Handling Operations (Amendments)

45CSR6 - To Prevent and Control Air Pollution from the Combustion of Refuse (Amendments)

45CSR25 - To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities (Amendments)

45CSR36 - Requirements for Determining conformity of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under title 23 U.S.C. or the Federal Transit Act, to Applicable Air Quality Implementation Plans (New Rule)

45CSR37 - Provisions to Control Sulfur Dioxide Emissions and Ambient Air Quality Levels of Sulfur Dioxide in Hancock County (New Rule)

45CSR38 - Provisions for Determination of Compliance with Air Quality Management Rules (New Rule)

Upon authorization and promulgation, the above rules, with the exception of 45CSR25, will be submitted to the U.S. Environmental Protection Agency for EPA approval and incorporation into the West Virginia State Implementation Plan under the Federal Clean Air Act, as amended. 45CSR25 will be submitted to U.S. EPA as a component part of the State's rules for program authorization relative to the hazardous waste management provisions under the federal Resource Conservation and Recovery Act.

After conclusion of the hearing on the proposed rules above, the Division of Environmental Protection will hold a hearing on proposed minor revisions to the maintenance plans associated with West Virginia's three redesignation requests currently pending before U.S. EPA for the Charleston, Parkersburg, and Huntington/Ashland ozone nonattainment areas. These revisions contain language which clarifies West Virginia's commitments for contingency measures that had been incorporated in the original November 13, 1992 Redesignation Request, the Update to the November 13, 1992 Redesignation Request, dated February 28, 1994 for the Charleston/Parkersburg areas and the Amendment to the November 12, 1992 Redesignation Request, dated November 12, 1993 for the Huntington/Ashland area.

The public hearing will be held in the Office of Air Quality's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written comments by all interested parties will be accepted from the date of this notice until the close of the hearing and made part of the record. Oral comments will be accepted at the public hearing and will be limited to five minutes per person per rule. The period for public comment will end at the close of the hearing.

Copies of the proposed legislative rules may be obtained from the Office of Secretary of State or may be reviewed during normal business hours at the following location: Office of Air Quality, Northern Panhandle Regional Office, 1911 Wanwood Avenue, Wheeling, WV on and after July 8, 1994.

Please provide any written comments or questions to the following contact and office:

G. Dale Farley  
Office of Air Quality

STATE OF WEST VIRGINIA,  
COUNTY OF OHIO.

I, Bonnie Mattern for the publisher of the

WHEELING NEWS-REGISTER  
~~WHEELING INTELLIGENCER~~

newspapers published in the CITY OF

WHEELING, STATE OF WEST VIRGINIA, hereby certify that the annexed publication was inserted in said newspaper on the following dates:

July 8, 1994

commencing on the 8 day of July, 1994

Given under my hand this 13 day of July, 1994

Bonnie Mattern

Sworn to and subscribed before me this 15<sup>th</sup> day of

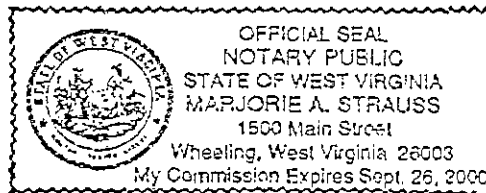
July 1994 at WHEELING, OHIO COUNTY, WEST VIRGINIA

Marjorie A. Strauss

Notary Public

of, in and for OHIO COUNTY, WEST VIRGINIA.

My Commission expires Sept. 26, 2000



NOTICE

On Tuesday, August 9, 1994, beginning at 9:00 a.m., the West Virginia Division of Environmental Protection will hold public hearings on the following proposed new legislative rules or rule amendments:

45CSR5 To Prevent and Control Air Pollution from the Operation of Coal Preparation Plants and Coal Handling Operations (Amendments)

45CSR6 To Prevent and Control Air Pollution from the Combustion of Refuse (Amendments)

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

45CSR36 Requirements for Determining Conformity of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act, To Applicable Air Quality Implementation Plans (New Rule)

45CSR37 Provisions to Control Sulfur Dioxide Emissions and Ambient Air Quality Levels of Sulfur Dioxide in Hancock County (New Rule)

45CSR38 Provisions for Determination of Compliance with Air Quality Management Rules (New Rule)

Upon authorization and promulgation, the above rules, with the exception of 45CSR25, will be submitted to the U.S. Environmental Protection Agency for EPA approval and incorporation into the West Virginia State Implementation Plan under the federal Clean Air Act, as amended. 45CSR25 will be submitted to U. S. EPA as a component part of the State's rules for program authorization relative to the hazardous waste management provisions under federal Resource Conservation and Recovery Act.

After conclusion of the hearing on the proposed rules above, the Division of Environmental Protection will hold a hearing on proposed minor revisions to the maintenance plans associated with West Virginia's three redesignation requests currently pending before U. S. EPA for the Charleston, Parkersburg, and Huntington/Ashland ozone nonattainment areas. These revisions contain language which clarifies West Virginia's commitments for contingency measures that had been incorporated in the original November 13, 1992 Redesignation Request; the Update to the November 13, 1992 Redesignation Request dated

G: Dale Farley  
Office of Air Quality  
Division of  
Environmental Protection  
1558 Washington  
Street, East  
Charleston, WV 25311-2599  
LH-931 7-7,94

AFFIDAVIT OF PUBLICATION

WEST VIRGINIA,  
COUNTY OF CABELL, TO-WIT:

I, Connie Rappold being first duly sworn, depose and say

that I am Legal Clerk for The Herald-Dispatch, a corporation, who publishes at Huntington, Cabell County, West Virginia, the newspaper: The Herald-Dispatch, a independent newspaper, in the morning seven days each week, Monday through Sunday including New Year's Day, Memorial Day, the Fourth of July, Labor Day, Thanksgiving and Christmas; that I have been duly authorized by the Board of Directors of such corporation to execute this affidavit of publication for an on behalf of such corporation and the newspaper mentioned herein; that the legal advertisement attached in the left margin of this affidavit and made a part hereof and bearing number LH-931 was duly published in

The Herald-Dispatch

one time, ~~once a week for~~ successive weeks, commencing with its issue of the 7th day of July, 19 94, and ending with the issue of the 7th day of July, 19 94, and was posted at the East door of the Cabell County Courthouse

on the 7th day of July, 19 94; that said legal advertisement was published on the following dates: July 7, 1994

; that the cost of publishing said annexed advertisement as aforesaid was ;; that such newspaper in which such legal advertisement was published has been and is now published regularly, at least as frequently as once a week for at least fifty weeks during the calendar year as prescribed by its mailing permit, and has been so published in the municipality of Huntington, Cabell County, West Virginia, for at least one year immediately preceding the date on which the legal advertisement set forth herein was delivered to such newspaper for publication; that such newspaper is a newspaper of "general circulation" as defined in Article 3, Chapter 59, of the West Virginia Code, within the publication area or areas of the municipality of Huntington, Cabell and Wayne Counties, West Virginia, and

that such newspaper is circulated to the general public at a definite price or consideration; that such newspaper on each date published consists of not less than four pages without a cover; and that it is a newspaper to which the general public resorts for passing events of a political, religious, commercial and social nature, and for current happenings, announcements, miscellaneous reading matters, advertisements and other notices.

Connie Rappold

Taken, subscribed and sworn to before me in my said county this 7th day of June, 19 94

My commission expires October 24, 2000

Melissa L. Miller

Notary Public  
Cabell County,  
West Virginia

burg areas and the Amendment to the November 12, 1992 Redesignation Request, dated November 12, 1993 for the Huntington/Ashland area.

The public hearing will be held in the Office of Air Quality's Conference Room at 1558 Washington Street, East, Charleston, West Virginia. The hearing is open to the public. Written comments by all interested parties will be accepted from the date of this notice until the close of the hearing and made part of the record. Oral comments will be accepted at the public hearing and will be limited to five minutes per person per rule. The period for public comment will end at the close of the hearing.

Copies of the proposed legislative rules may be obtained from the Office of Secretary of State or may be reviewed during normal business hours at the following location: Public Library, 455 9th Street Plaza, Huntington, WV on and after July 8, 1994.

Please provide any written comments or questions to the following contact and office:

NOTICE OF PUBLIC HEARING

On Tuesday, August 9, 1994, beginning at 9:00 a.m., the West Virginia Division of Environmental Protection will hold public hearings on the following proposed new legislative rules or rule amendments:

- 45CSR5 - To Prevent and Control Air Pollution from the Operation of Coal Preparation Plants and Coal Handling Operations (Amendments)
- 45CSR6 - To Prevent and Control Air Pollution from the Combustion of Refuse (Amendments)
- 45CSR25 - To Prevent Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities (Amendments)
- 45CSR36 - Requirements for Determining Conformity of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act, To Applicable Air Quality Implementation Plans (New Rule)
- 45CSR37 - Provisions to Control Sulfur Dioxide Emissions and Ambient Air Quality Levels of Sulfur Dioxide in Hancock County (New Rule)
- 45CSR38 - Provisions for Determination of Compliance with Air Quality Management Rules (New Rule)

Upon authorization and promulgation, the above rules, with the exception of 45CSR25, will be submitted to the U.S. Environmental Protection Agency for EPA approval and incorporation into the West Virginia State Implementation Plan under the federal Clean Air Act, as amended. 45CSR25 will be submitted to U.S. EPA as a component part of the State's rules for program authorization relative to the hazardous waste management provisions under the federal Resource Conservation and Recovery Act.

After conclusion of the hearing on the proposed rules above, the Division of Environmental Protection will hold a hearing on proposed minor revisions to the maintenance plans associated with West Virginia's three redesignation requests currently pending before U. S. EPA for the Charleston, Parkersburg, and Huntington/Ashland ozone nonattainment areas. These revisions contain language which clarifies West Virginia's commitments for contingency measures that had been incorporated in the original November 13, 1992 Redesignation Request, the Update to the November 13, 1992 Redesignation Request, dated February 28, 1994 for the Charleston/Parkersburg areas and the Amendment to the November 12, 1992 Redesignation Request, dated November 12, 1993 for the Huntington/Ashland area.

The public hearing will be held in the Office of Air Quality's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written comments by all interested parties will be accepted from the date of this notice until the close of the hearing and made part of the record. Oral comments will be accepted at the public hearing and will be limited to five minutes per person per rule. The period for public comment will end at the close of the hearing.

Copies of the proposed legislative rules may be obtained from the Office of Secretary of State or may be reviewed during normal business hours at the following location: Parkersburg/Wood County Public Library, 3100 Emerson Avenue, Parkersburg, West Virginia on and after July 8, 1994.

Please provide any written comments or questions to the following contact and office:

G. Dale Farley  
Office of Air Quality  
Division of Environmental Protection  
1558 Washington Street, East  
Charleston, WV 25311-2699

Jul 8

HEATHER BYERS  
being first duly sworn, says that the  
NOTICE OF PUBLIC HEARING

hereto attached was printed in the Parkersburg News  
a DAILY newspaper published  
in the City of Parkersburg, Wood County, West Virginia, and posted  
at the front door of the Court House for ONE  
successive weeks, the first publication and posting thereon being on  
the 8th day of July, 1994, and subse-  
quent publication on the      day of     , 19    ,  
the      day of     , 19    , the      day of  
    , 19    , the      day of     ,  
19    , and the      day of     , 19    .

Printer's Fee \$ 40.24  
6 2/8 " x 103 = 643.75 words @ .0625  
*Heather Byers*

Subscribed and sworn to before me this 8th day of  
July, 1994.

*Melanie Zyla*  
Notary Public for Wood County, West Virginia

My commission expires 3-23-04



CHARLESTON NEWS STATION

P.O. Box 2993
Charleston, West Virginia 25330
Billing 348-4898
Classified 348-4848
1-800-WVA-NEWS
FEIN 55-0676079

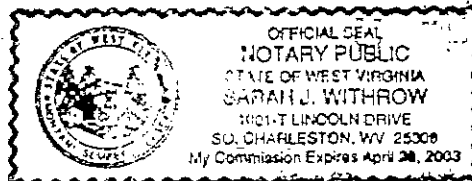
Table with invoice details: ACCOUNT NBR 037143002, SALES REP ID 0016, INVOICE NBR 371430020711005

Legal pricing is based upon 67 words per column inch at a rate of \$.0725 per word. Each successive insertion is discounted by 25% of the first insertion rate (\$.054375 per word)

Main invoice table with columns: ISSUE DATE, AD TYPE, PUB., DESCRIPTION, AD NUMBER, AD SIZE, RATE, GROSS AMOUNT, NET AMOUNT. Includes row for PUBLIC HEARING and a TOTAL INVOICE AMOUNT row.

State of West Virginia, AFFIDAVIT OF PUBLICATION

I, Sandra Ligg



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 9TH day of JULY 1994. Published during the following dates: 07/08/94-07/08/94. Subscribed and sworn to before me this 12 day of July. Printers fee \$ 80.03

Signature of Notary Public Sarah J. Withrow, Notary Public of Kanawha County, West Virginia

NOTICE OF PUBLIC HEARING

On Tuesday, August 9, 1994, beginning at 9:00 a.m., the West Virginia Division of Environmental Protection will hold public hearings on the following proposed new legislative rules or rule amendments:

- 45CSR5 - To prevent and Control Air Pollution from the Operation of Coal Preparation Plants and Coal Handling Operations (Amendments)
45CSR6 - To Prevent and Control Air Pollution from the Combustion of Refuse (Amendments)
45CSR25 - To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities (Amendments)
45CSR36 - Requirements for Determining Conformity of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S. C. or the Federal Transit Act, To Applicable Air Quality Implementation Plans (New Rule)
45CSR37 - Provisions to Control Sulfur Dioxide Emissions and Ambient Air Quality Levels of Sulfur Dioxide in Hancock County (New Rule)
45CSR38 - Provisions for Determination of Compliance with Air Quality Management Rules (New Rule)

Upon authorization and promulgation, the above rules, with the exception of 45CSR25, will be submitted to the U.S. Environmental Protection Agency for EPA approval and incorporation into the West Virginia State Implementation Plan under the federal Clean Air Act, as amended. 45CSR25 will be submitted to U.S. EPA as a component part of the State's rules for program authorization relative to the hazardous waste management provisions under the federal Resource Conservation and Recovery Act.

After conclusion of the hearing on the proposed rules above, the Division of Environmental Protection will hold a hearing on proposed minor revisions to the maintenance plans associated with West Virginia's three redesignation requests currently pending before U.S. EPA for the Charleston, Parkersburg, and Huntington/Ashland ozone nonattainment areas. These revisions contain language which clarifies West Virginia's commitments for contingency measures that had been incorporated in the original November 13, 1992 Redesignation Request, the Update to the November 13, 1992 Redesignation Request, dated February 28, 1994 for the Charleston/Parkersburg areas and the Amendment to the November 12, 1992 Redesignation Request, dated November 12, 1993 for the Huntington/Ashland area.

The public hearing will be held in the Office of Air Quality's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written comments by all interested parties will be accepted from the date of this notice until the close of the hearing and made part of the record. Oral comments will be accepted at the public hearing and will be limited to five minutes per person per rule. The period for public comment will end at the close of the hearing.

Copies of the proposed legislative rules may be obtained from the Office of Secretary of State or may be reviewed during normal business hours at the following location: Library of the Office of Air Quality located at the address below on and after July 8, 1994.

Please provide any written comments or questions to the following contact and office:

G. Dale Farley
Office of Air Quality
Division of Environmental Protection
1558 Washington Street, East
Charleston, WV 25311-2599

Administrative tracking table with columns: Appn. Yr., Acc. #, Line Item, Off. Code, Fed. Code, RC, Vendor, FIMS FUND, FIMS FY, FIMS ORG, FIMS ACT, FIMS OBJ CODE, DO. Includes handwritten entries like 95, 7897.17, 035, 5, 504, 509, SA, 550.676.079, 4, 8708, 1995, 0313, 096.

# AFFIDAVIT OF PUBLICATION

## BECKLEY NEWSPAPERS INC.

### BECKLEY, WEST VIRGINIA 25801

July 8, 1994

STATE OF WEST VIRGINIA  
COUNTY OF RALEIGH, to wit:

I, Robert E. Zutaut being first duly sworn upon my oath, do depose and say that I am Advertising Manager of Beckley Newspapers Inc., a corporation, publisher of the newspaper entitled The Register-Herald, an independent newspaper; that I have been duly authorized by the board of directors of such corporation to execute this affidavit of publication; that such newspaper has been published for more than one year prior to publication of the annexed notice described below; that such newspaper is regularly published daily, for at least fifty weeks during the calendar year, in the municipality of Beckley, Raleigh County, West Virginia; that such newspaper is a newspaper of "general circulation," as that term is defined in article three, chapter fifty-nine of the Code of West Virginia, 1931, as amended, within the publication area or areas of the aforesaid municipality and county; that such newspaper averages in length four or more pages, exclusive of any cover, per issue; that such newspaper is circulated to the general public at a definite price of consideration; that such newspaper is a newspaper to which the general public resorts for passing events of a political, religious, commercial and social nature, and for current happenings, announcements, miscellaneous reading matters, advertisements and other notices; that the annexed notice

of Public Hearing  
(Description of notice)

was duly published in said newspaper once a week for one successive week (Class I), commencing with the issue of the 8th day of July, 1994, and ending with the issue of the 8th day of July, 1994, (and was posted at the \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_); that said annexed notice was published on the following dates: \_\_\_\_\_

July 8, 1994 and that the

cost of publishing said annexed notice as aforesaid was \$ 44.30

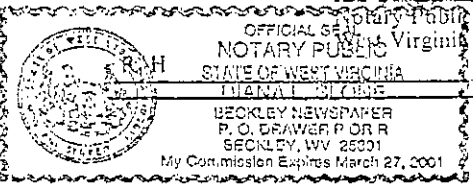
Signed Robert E. Zutaut  
Robert E. Zutaut, Advertising Manager  
Beckley Newspapers

Taken, subscribed and sworn to before me in my said county this

8th day of July, 1994

My commission expires March 27, 2001

Notary Public  
of Raleigh County,  
West Virginia



### COPY OF PUBLICATION

**NOTICE OF PUBLIC HEARING**  
On Tuesday, August 9, 1994, beginning at 9:00 a.m., the West Virginia Division of Environmental Protection will hold public hearings on the following proposed new legislative rules or rule amendments:

45CSR5 - To Prevent and Control Air Pollution from the Operation of Coal Preparation Plants and Coal Handling Operations (Amendments)

45CSR6 - To Prevent and Control Air Pollution from the Combustion of Refuse (Amendments)

45CSR25 - To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities (Amendments)

45CSR36 - Requirements for Determining Conformity of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act, To Applicable Air Quality Implementation Plans (New Rule)

45CSR37 - Provisions to Control Sulfur Dioxide Emissions and Ambient Air Quality Levels of Sulfur Dioxide in Hancock County (New Rule)

45CSR38 - Provisions for Determination of Compliance with Air Quality Management Rules (New Rule)

Upon Authorization and promulgation, the above rules, with the exception of 45CSR25, will be submitted to the U.S. Environmental Protection Agency for EPA approval and incorporation into the West Virginia State Implementation Plan under the federal Clean Air Act, as amended. 45CSR25 will be submitted to U.S. EPA as a component part of the State's rules for program authorization relative to the hazardous waste management provisions under the federal Resource Conservation and Recovery Act.

After conclusion of the hearing on the proposed rules above, the Division of Environmental Protection will hold a hearing on proposed minor revisions to the maintenance plans associated with West Virginia's three redesignation requests currently pending before U.S. EPA for the Charleston, Parkersburg, and Huntington/Ashland ozone nonattainment areas. These revisions contain language which clarifies West Virginia's commitments for contingency measures that had been incorporated in the original November 13, 1992 Redesignation Request, the Update to the November 13, 1992 Redesignation Request, dated February 28, 1994 for the Charleston/Parkersburg areas and the Amendment to the November 12, 1992 Redesignation Request, dated November 12, 1993 for the Huntington/Ashland area.

The public hearing will be in the Office of Air Quality Conference Room at Washington Street, Charleston, West Virginia. hearing is open to the public. Written comments by interested parties will be accepted from the date of notice until the close of hearing and made part of the record. Oral comments will be accepted at the public hearing and will be limited to five minutes per person per rule. period for public comment end at the close of the hearing. Copies of the proposed legislative rules may be obtained from the Office of Secretary of State or may be reviewed at normal business hours at following location: Raleigh County Public Library, P.O. 1876, Beckley, WV on and July 8, 1994.

Please provide any written comments or questions to following contact and office: G. Dale Farley, Office of Quality, Division of Environmental Protection, Washington Street, Charleston, WV 25311-2599. 7-8-Fri-1-RH

**NOTICE OF PUBLIC HEARING**

On Tuesday, August 9, 1994, beginning at 9:00 a.m., the West Virginia Division of Environmental Protection will hold public hearings on the following proposed new legislative rules or rule amendments:  
45CSR5 - To Prevent and Control Air Pollution from the Operation of Coal Preparation Plants and Coal Handling Operations (Amendments)  
45CSR6 - To Prevent and Control Air Pollution from the Combustion of Refuse (Amendments)  
45CSR25 - To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities (Amendments)  
45CSR36 - Requirements for Determining Conformity of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U. S. C. or the Federal Transit Act, To Applicable Air Quality Implementation Plans (New Rule)  
45CSR37 - Provisions to Control Sulfur Dioxide Emissions and Ambient Air Quality Levels of Sulfur Dioxide in Hancock County (New Rule)  
45CSR38 - Provisions for Determination of Compliance with Air Quality Management Rules (New Rule)  
Upon authorization and promulgation, the above rules, with the exception of 45CSR25, will be submitted to the U. S. Environmental Protection Agency for EPA approval and incorporation into the West Virginia State Implementation Plan under the federal Clean Air Act, as amended. 45CSR25 will be submitted to U. S. EPA as a component part of the State's rules for program authorization relative to the hazardous waste management provisions under the federal Resource Conservation and Recovery Act.

After conclusion of the hearing on the proposed rules above, the Division of Environmental Protection will hold a hearing on proposed minor revisions to the maintenance plans associated with West Virginia's three redesignation requests currently pending before U. S. EPA for the Charleston, Parkersburg, and Huntington / Ashland ozone nonattainment areas. These revisions contain language which clarifies West Virginia's commitments for contingency measures that had been incorporated in the original November 13, 1992 Redesignation Request, the Update to the November 13, 1992 Redesignation Request, dated February 28, 1994 for the Charleston / Parkersburg areas and the Amendment to the November 12, 1992 Redesignation Request, dated November 12, 1993 for the Huntington / Ashland area. The public hearing will be held in the Office of Air Quality's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written comments by all interested parties will be accepted from the date of this notice until the close of the hearing and made part of the record. Oral comments will be accepted at the public hearing and will be limited to five minutes per person per rule. The period for public comment will end at the close of the hearing. Copies of the proposed legislative rules may be obtained from the Office of Secretary of State or may be reviewed during normal business hours at the following location: Office of Air Quality, North Central Regional Office, 517 112 East Park Avenue, Fairmont, WV on and after July 8, 1994. Please provide any written comments or questions to the following contact and office:

G. Gale Farley  
Office of Air Quality  
Division of Environmental Protection  
1558 Washington Street, East  
Charleston, WV 25311-2599

**PUBLISHER'S CERTIFICATE**

OFFICE OF AIR QUALITY  
AUG 11 10:45

STATE OF WEST VIRGINIA,  
COUNTY OF HARRISON

Deborah S. Veltri

I, \_\_\_\_\_

Classified Office Manager of THE CLARKSBURG EXPONENT, a newspaper of general circulation published in the City of Clarksburg, County and State aforesaid, do hereby certify that the annexed

Notice of Public Hearing

was published in said THE CLARKSBURG EXPONENT one time, on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_ 94

The publisher's fee for said publication is \$ \_\_\_\_\_ 25.25

*Deborah S. Veltri*

Classified Office Mgr. of The Clarksburg Exponent

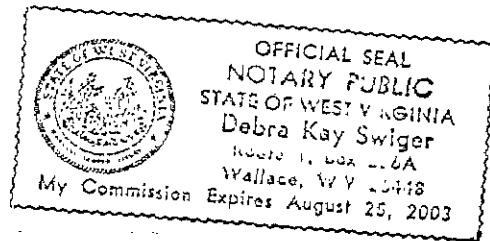
SEAL

Subscribed and sworn to before me this \_\_\_\_\_ 7 \_\_\_\_\_ day of \_\_\_\_\_ July \_\_\_\_\_ 19\_\_ 94

*Debra Kay Swiger*  
Notary Public in and for Harrison County, WV.

My commission expires on the 25th day of August, 2003

Form CA-14 E



NOTICE OF PUBLIC HEARING

On Tuesday, August 9, 1994, beginning at 9:00 a.m., the West Virginia Division of Environmental Protection will hold public hearings on the following proposed new legislative rules and rule amendments:

- 45CSR5 - To Prevent and Control Air Pollution from the Operation of Coal Preparation Plants and Coal Handling Operations (Amendments)
- 45CSR6 - To Prevent and Control Air Pollution from the Combustion of Refuse (Amendments)
- 45CSR25 - To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities (Amendments)
- 45CSR36 - Requirements for Determining Conformity of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act, To Applicable Air Quality Implementation Plans (New Rule)
- 45CSR37 - Provisions to Control Sulfur Dioxide Emissions and Ambient Air Quality Levels of Sulfur Dioxide in Hancock County (New Rule)
- 45CSR38 - Provisions for Determination of Compliance with Air Quality Management Rules (New Rule)

# State of West Virginia, County of Upshur, ss:

..... Mark Davis ..... Advertising Manager  
Record Delta, a newspaper published at Buckhannon in the said county, do hereby certify that the annexed ..... NOTICE OF PUBLIC HEARING .....

.....  
was published once a week for ..... ONE (1) ..... successive weeks in said Record Delta newspaper published as aforesaid, commencing on the .8th day.....  
..... OF July ..... days of 19..94.....

Given under my hand this .8th day of July.... day of 19 94.....

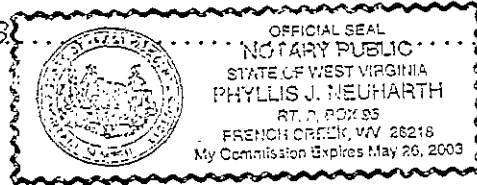
..... Advertising Manager  
Printers fee \$ .34.50 .....

WEST VIRGINIA, UPSHUR COUNTY, TO-WIT:

Subscribed and sworn to before me this 8th day of July day of 19 94....

..... Phyllis J. Neuharth ..... Notary Public.

My Commission expires May 26, 2003



Upon authorization and promulgation, the above rules, with the exception of 45CSR25, will be submitted to the U. S. Environmental Protection Agency for EPA approval and incorporation into the West Virginia State Implementation Plan under the Federal Clean Air Act, as amended. 45CSR25 will be submitted to U. S. EPA as a component part of the State's rules for program authorization relative to the hazardous waste management provisions under the federal Resource Conservation and Recovery Act.

After conclusion of the hearing on the proposed rules above, the Division of Environmental Protection will hold a hearing on proposed minor revisions to the maintenance plans associated with West Virginia's three redesignation requests currently pending before U. S. EPA for the Charleston, Parkersburg, and Huntington/ Ashland ozone nonattainment areas. These revisions contain language which clarifies West Virginia's commitments for contingency measures that had been incorporated in the original November 13, 1992 Redesignation Request, the Update to the November 13, 1992 Redesignation Request, dated February 28, 1994 for the Charleston/Parkersburg areas and the Amendment to the November 12, 1992 Redesignation Request, dated November 12, 1993 for the Huntington/Ashland area.

The public hearing will be held in the Office of Air Quality's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written comments by all interested parties will be accepted from the date of this notice until the close of the hearing and made part of the record. Oral comments will be accepted at the public hearing and will be limited to five minutes per person per rule. The period for public comment will end at the close of the hearing.

Copies of the proposed legislative rules may be obtained from the Office of Secretary of State or may be reviewed during normal business hours at the following location: Gassaway Public Library, 100 Birch Street, Gassaway, WV on or after July 8, 1994.

Please provide any written comments or questions to the following contact and office:

G. Dale Farley  
Office of Air Quality  
Division of Environmental Protection  
1558 Washington Street, East,  
Charleston, WV 25311-2599

**NOTICE OF PUBLIC HEARING**

On Tuesday, August 9, 1994, beginning at 9:00 a.m., the West Virginia Division of Environmental Protection will hold public hearings on the following proposed new legislative rules or rule amendments:

45CSR5- To Prevent and Control Air Pollution from the Operation of Coal Preparation Plants and Coal Handling Operations (Amendments)

45CSR8- To Prevent and Control Air Pollution from the Combustion of Refuse (Amendments)

45CSR25- To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities (Amendments)

45CSR38- Requirements for Determining Conformity of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act, To Applicable Air Quality Implementation Plans (New Rule)

45CSR37- Provisions to Control Sulfur Dioxide Emissions and Ambient Air Quality Levels of Sulfur Dioxide in Hancock County (New Rule)

45CSR380- Provisions for Determination of Compliance with Air Quality Management Rules (New Rule)

Upon authorization and promulgation, the above rules, with the exception of 45CSR25, will be submitted to the U.S. Environmental Protection Agency for EPA approval and incorporation into the West Virginia State Implementation Plan under the federal Clean Air Act, as amended. 45CSR25 will be submitted to U.S. EPA as a component part of the State's rules for program authorization relative to the hazardous waste management provisions under the federal Resources Conservation and Recovery Act.

After conclusion of the hearing on the proposed rules above, the Division of Environmental Protection will hold a hearing on proposed minor revisions to the maintenance plans associated with West Virginia's three redesignation requests currently pending before U.S. EPA for the Charleston, Parkersburg, and Huntington/Ashland ozone nonattainment areas. These revisions contain language which clarifies West Virginia's commitments for contingency measures that had been incorporated in the original November 13, 1992 Redesignation Request, the Update to the November 13, 1992 Redesignation Request, dated February 28, 1994 for the Charleston/Parkersburg areas and the Amendment to the November 12, 1992 Redesignation Request, dated November 12, 1993 for the Huntington/Ashland area.

The public hearing will be held in the Office of Air Quality's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written comments by all interested parties will be accepted from the date of this notice until the close of the hearing and made part of the record. Oral comments will be accepted at the public hearing and will be limited to five minutes per person per rule. The period for public comment will end at the close of the hearing.

# Certificate of Publication

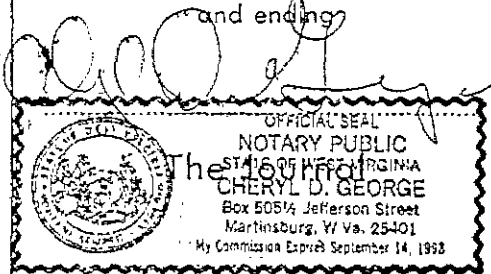
This is to certify the annexed advertisement  
WV DEPT. COMM., LABOR, ENV. RES.  
DIV. ENV. PROTECTION  
OFFICE OF AIR QUALITY.....

**NOTICE OF PUBLIC HEARING.....**

appeared for .....1..... consecutive <sup>days</sup> weeks  
in The Journal Publishing Company a  
newspaper published in the City of  
Martinsburg, W. Va., in its issue  
beginning

7/8

and ending



Fee \$ .....43.61.....

Copies of the proposed legislative rules may be obtained from the Office of Secretary of State or may be reviewed during normal business hours at the following locations: Martinsburg-Berkeley County Public Library, 101 King Street, Martinsburg, WV and the Office of Air Quality's Burlington Office, P.O. Box 99, Burlington, WV on and after July 8, 1994.

Please provide any written comments or questions to the following contact and office:

G. Dale Farley  
Office of Air Quality  
Division of Environmental  
Protection  
1558 Washington Street, East  
Charleston, WV 25311-2599  
7:8(11)

OAQ MAILING LIST FOR PUBLIC HEARINGS/MEETINGS

Mr. Larry Myers  
Allegheny Power Service Corp.  
800 Cabin Hill Drive  
Greensburg, Pennsylvania 15601

Mr. Brian Broderick  
BNA PLUS  
Bureau of National Affairs  
1231 25th Street, N.W.  
Washington, D.C. 20037

Mr. Greg Scandrett  
ERM Midwest  
5088 West Washington Street  
Charleston, WV 25313

Ms. Becky Fleming  
Charleston Daily Mail  
1001 Virginia Street, East  
Charleston, WV 25301

Mr. Norm Steenstra  
Environmental Coordinator  
West Virginia Citizen Action Group  
1324 Virginia Street, East  
Charleston, West Virginia 25301

Mr. Eric Niiler  
Charleston Gazette  
1002 Virginia Street, East  
Charleston, WV 25301

Ms. Joline Brady  
103 Timberlake Circle  
Scott Depot, WV 25560

Ms. Mildred Holt  
P. O. Box 367  
Institute, WV 25112

Ms. Lillian Erskin  
52 Bailes Drive  
Nitro, WV 25143

Ms. Suzanne Tenkhoff  
National Institute for Chemical Studies  
Nitro/St. Albans Committee  
31 Bailes Drive  
Nitro, West Virginia 25143

Mr. Ray de Bolt  
Fire Chief  
Charleston Fire Department  
808 Virginia Street, West  
Charleston, WV 25302

The Honorable William Croye  
Mayor, City of Belle  
National Institute for Chemical Studies  
Upper Kanawha Valley Committee  
110 East DuPont Avenue  
Belle, West Virginia 25015

Dr. Paul Hill, President  
National Institute for Chemical Studies  
University of Charleston  
2300 MacCorkle Avenue, S.E.  
Charleston, West Virginia 25304

Mr. Tim Carroll  
Regional Office Supervisor  
Northern Panhandle Regional Office  
WV Office of Air Quality  
1911 Warwood Avenue  
Wheeling, West Virginia 26003

Mr. William Taylor  
Regional Engineer  
North Central Regional Office  
WV Office of Air Quality  
109 Adams Street, Room M-2  
Fairmont, WV 26554-2800

Mr. Robert Parsons  
Jackson & Kelly  
1600 Laidley Tower  
Charleston, WV 25301

Mr. Ira H. Dorfman  
Vice-President, Energy & Environment  
Ryan-McGinn  
2300 Clarendon Blvd., Suite 610  
Arlington, VA 22201

Larry G. Kopelman  
Special Assistant Attorney General  
WV Air Pollution Control Commission  
No. 9 Pennsylvania Avenue  
Charleston, WV 25302

Ms. Kim Baker  
Ohio Valley Environmental Coalition  
P. O. Box 970  
Proctorville, OH 45669

Ms. Helen Gibbins  
6128 Gideon Road  
Huntington, WV 25705

Ms. Missy Woolverton  
WV Citizen Action Group  
1324 Virginia Street, East  
Charleston, WV 25301

Ms. Rhonda Hooper  
Monsanto  
1 Monsanto Road  
Nitro, WV 25143

Mr. Richard Poling  
Engineer II  
c/o WV Division of Highways  
P. O. Box 88  
Burlington, WV 26710

Ms. Claudia Banner  
Appalachian Power Company  
P. O. Box 2021  
Roanoke, Virginia 24022-2121

Mr. David C. Callaghan  
Director, Division of Environmental  
Protection  
10 McJunkin Road  
Nitro, WV 25143-2506

Act Foundation  
523 Central Avenue  
Charleston, WV 25302

Ms. Pamela Nixon  
406 Grandview Point  
Dunbar, WV 25064

Mr. Oliver A. Fick  
Air Program Manager  
Engineering-Science, Inc.  
57 Executive Park South, N.E.  
Suite 590  
Atlanta, Georgia 30329-2265

Mr. Brian Farkas  
Public Information Officer  
WV Division of Environmental  
Protection  
10 McJunkin Road  
Nitro, WV 25143-2506

Ms. Liz McMeekin  
Aristech Chemical Company  
600 Grant Street  
Pittsburgh, PA 15219

Ms. Liz Schiffer  
128 Woodbridge Drive  
Charleston, WV 25311

Ms. Britt Bernheim  
Office of Air Quality  
1615 Washington Street, East  
Charleston, WV 25311

W VA OFFICE OF AIR QUALITY

AUGUST 9, 1994

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HOLBORT DAVID A	Hercules/Allegany Ballistics Lab	PO Box 210 Rocket Center, WV 26728
Christopher B. Power	Robinson & McEwee	Charleston
Doug Ricci	WV DOT	"
Mary Buzhita	Sussex State	Ore City PA
Ron Ryan	Chenier State	Martinsburg, WV
Gene Trapp	Quaker State	Newell, WV
Frank Poreck	WV DOT	Chas, WV
Richard Adkerson	WV DOT	Chas, WV
Donald C. Bailey	WV DOT	Chas, WV
John Wiseman	WV DOT	Chas. WV.

# W VA OFFICE OF AIR QUALITY

AUGUST 9, 1994

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<i>[Signature]</i>	WV DPA	1558 Washington St
John Bennett	WV DEP	"
Gene Trigg	Quaker State	Newell, West Va.
<i>[Signature]</i>	WV DPA	WV DPA
<i>[Signature]</i>	WV DEP OAG	Charleston
Kara Watson	"	"
Terrie Chandler	WV DEP - PID	Charleston

PUBLIC HEARING  
WEST VIRGINIA DIVISION OF ENVIRONMENTAL PROTECTION  
OFFICE OF AIR QUALITY

\* \* \* \* \*

The following is a transcript of a public hearing held at the West Virginia Division of Environmental Protection, Office of Air Quality, 1558 Washington Street, Charleston, Kanawha County, West Virginia, on August 9, 1994, at 9:00 a.m., and taken by Christy L. Morris, Certified Court Reporter and Notary Public, pursuant to notice.

\* \* \* \* \*

SUPERIOR COURT REPORTING  
Christy L. Morris, CCR  
3719 Virginia Avenue, S.E.  
Charleston, West Virginia 25304  
(304) 925-2244 Mobile 542-4606

ORIGINAL

## PROCEEDINGS

## 45CSR38

PROVISIONS FOR DETERMINATION OF COMPLIANCE WITH  
AIR QUALITY MANAGEMENT RULE

MS. CHANDLER: The purpose of this public hearing is to hear discussions on proposed Rule 45CSR38.

Provision For Determination Of  
Compliance With Air Quality Management Rule.

The purpose of this rule is to clarify the types of data that may be used by an owner of a facility subject to air pollutant emission standards or by the Director of the Division of Environmental Protection, in determining whether the facility is in compliance with or violation of the emission standards. The rule also clarifies the compliance testing procedures which are to be employed where existing emissions standards enforced by the Director are not definitive.

Upon authorization and promulgation, 45CSR38 will be submitted to the U.S. Environmental

Protection Agency for the EPA approval and incorporation into the West Virginia State Implementation Plan under the Federal Clean Air Act, as amended.

The floor is now open for public comment. There being nothing further, the public hearing for 45CSR38 is concluded.

The Division of Environmental Protection will now hold a hearing of proposed minor revisions to the maintenance plans associated with West Virginia's three redesignation request currently pending before USEPA for the Charleston/Parkersburg and Huntington/Ashland ozone nonattainment areas. No comments? Nothing further, then the hearing for the proposed minor revisions is concluded.

Nothing further, these hearing procedures are closed for the day. Comments will be accepted immediately following the hearing.

(WHEREUPON, said hearing was concluded.)

REPORTER'S CERTIFICATE

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

I, Christy L. Morris, Certified Court Reporter and Notary Public duly certify and commissioned, do hereby certify that the foregoing is a true and accurate transcript of the proceedings had in the public hearing on the 9th day of August, 1994.

Given under my hand and notarial seal this 11th day of August, 1994.

C.L. Morris CCR  
Certified Court Reporter  
Notary Public

MY COMMISSION EXPIRES: 12/11/95

**COMMENTS OF THE  
WEST VIRGINIA MANUFACTURERS ASSOCIATION  
REGARDING PROPOSED 45 C.S.R. 38  
"PROVISIONS FOR DETERMINATION OF COMPLIANCE  
WITH AIR QUALITY MANAGEMENT RULES"**

---

**COMMENTS OF THE  
WEST VIRGINIA MANUFACTURERS ASSOCIATION  
REGARDING PROPOSED 45 C.S.R. 38  
"PROVISIONS FOR DETERMINATION OF COMPLIANCE  
WITH AIR QUALITY MANAGEMENT RULES"**

---

**I. INTRODUCTION**

On July 6, 1994, the West Virginia Division of Environmental Protection ("DEP") filed with the Secretary of State a proposed legislative rule purporting to "clarify the types of data that may be used by an owner of a facility subject to air pollutant emission standards or by the Director of the DEP in determining whether the facility is in compliance with or in violation of the emission standards." In addition, the rule purports to clarify "the compliance testing procedures which are to be employed where existing emissions standards enforced by the Director are not definitive." The rule is proposed under the authorization of the West Virginia Air Pollution Control Act at Chapter 22, Article 5 of the West Virginia Code and is proposed for inclusion in the Code of State Regulations at Title 45, Series 38 ("the proposed rule"). In accordance with the notice requesting both written and oral comments regarding the proposed rule, the West Virginia Manufacturers Association ("WVMA") offers these comments.

The WVMA represents a broad cross-section of large and small industrial concerns throughout the State of West Virginia. In keeping with the WVMA's supportive position regarding the development of West Virginia's air pollution control program, the WVMA offers these comments in hopes that the comments will help facilitate progress toward a reasonable and protective air pollution control program.

## II. COMMENTS

1. **Proposed 45 C.S.R. 38-1.5, Incorporation by Reference -- Federal Counterpart Regulation, improperly references Clean Air Act sections 110(a)(2)(A), (C) and (F), 113(a) and (e) and 114(a)(3).**

The proposed rule, while not incorporating by reference Clean Air Act sections 110(a)(2)(A), (C) and (F), 113(a) and (e) and 114(a)(3), references those sections without regard to an effective date. Since the West Virginia rulemaking procedure prohibits incorporating future changes in federal regulations without amendment or formal rulemaking, one might assume that the reference date for these sections of the Clean Air Act is the effective date of the proposed rule. However, to avoid any potential problems regarding interpretation of the proposed rule, WVMA suggests that proposed 45 C.S.R. 38-1.5 be revised to include a clarification that the referenced Clean Air Act sections are those which were in effect on July 1, 1994. Any federal regulatory incorporation references should also be to July 1, 1994 in order to simplify identification of applicable requirements by the regulated community and the OAQ.

2. **Proposed 45 C.S.R. 38-1.6, Determination of Stringency -- Federal Counterpart Regulation, and 45 C.S.R. 38-1.7, Constitutional Takings Determination, should not be included as a section in the rule; rather, each should be attached to the proposed rule as an addendum.**

WVMA believes that the West Virginia legislature did not contemplate that the Director's statements regarding stringency of specific revisions in a proposed rule and constitutional takings determination would be incorporated into any Office of Air Quality ("OAQ") rules and adopted as law. In the case of the determination of stringency, West Virginia Code §22-1-3a requires that the Director provide a written statement of reasons for promulgation of either more or less stringent rules than their

federal counterpart. However, WVMA believes that the rulemaking authority established in West Virginia Code § 22-5-4 should not be interpreted to allow the inclusion of the Director's determination of stringency as part of the rule itself. It should, therefore, be deleted and the analysis filed as part of the documents supporting the rule lodged with the Secretary of State.

With respect to the constitutional takings determination, such an assessment is only required in limited circumstances and WVMA believes that the proposed rule does not appear to be a circumstance in which a determination of constitutional taking would result. W.Va. Code § 22-1A-3(a) provides that such an assessment is not required unless the action being contemplated by the Division is "reasonably likely to deprive a private real property owner of his or her property in fee simple or to deprive an owner of all productive use of his or her property . . . ." WVMA believes that the promulgation of the proposed rule is not an action which falls within the ambit of W.Va. Code § 22-1A-3(a). W.Va. Code § 22-1A-3(c) exempts rulemaking simply seeking to limit uses from the assessment requirement, stating that "licensing or permitting conditions, requirements or limitations to the use of private real property pursuant to any applicable state or federal statutes, rules or regulations; . . . and rules and emergency rules of the Division that are reasonably likely to limit the use of private real property pursuant to any applicable state or federal statutes, rules or regulations . . ." do not require such a takings assessment. W.Va. Code § 22-1A-3(c)(1) and (2). WVMA therefore requests that this proposed section be deleted from

the final rule and that the Director's "takings" analysis be included with the documents filed with the Secretary of State in support of the rule.

**3. Proposed 45 C.S.R. 38-2.5, defining "owner or operator," is overbroad.**

The Justification section of the proposed rule indicates that the proposed rule is "necessary to adequately implement the state operating permit program under 45 C.S.R. 30." WVMA is unable to find a definition of "owner or operator" in 45 C.S.R. 30. Moreover, the proposed rule definition of "owner or operator" is overbroad in that it includes any source subject to air pollutant emission standards. Federal Clean Air Act Sections 111 and 112 both define the term "owner or operator" to include only persons who own, lease, operate, control, or supervise a stationary source. Therefore, WVMA requests that the proposed rule definition of "owner or operator" be revised to include "any person who owns, leases, operates, controls, or supervises a stationary source subject to air pollutant emission standards." (New language underscored.)

**4. Proposed 45 C.S.R. 48-3.1, Compliance Determination Methods and Procedures, improperly references the Code of Federal Regulations**

The proposed rule references several sections of Title 40 of the C.F.R. specifically and generally references "other relevant parts of Title 40 of the Code of Federal Regulations applicable to a specific type or category of source or for a similar source" in determining whether a source complies with emission limitations. Since the West Virginia rulemaking procedure prohibits incorporating future changes in federal regulations without amendment or formal rulemaking, WVMA suggests that proposed 45 C.S.R. 38-3.1 be revised to include a clarification that the referenced

C.F.R. sections are those which were in effect on July 1, 1994, as previously noted. In addition, WVMA believes that the generic reference to "other relevant parts of Title 40 of the C.F.R." is ambiguous. WVMA suggests that such references be to specific sections as of a date certain.

In addition to containing ambiguities regarding references to the Code of Federal Regulations, the proposed rule deletes the opacity averaging requirements established for determining compliance with the federal opacity standard. WVMA believes that this deletion, in conjunction with existing OAQ opacity regulations, makes the OAQ opacity rule significantly more stringent than the federal counterpart. W.Va. Code § 22-1-3a requires that, prior to promulgating a new rule which is "more stringent than the counterpart federal rule . . .", the Director "first provides specific written reasons which demonstrate that such provisions are reasonably necessary to protect, preserve, or enhance the quality of West Virginia's environment or human health or safety . . . ." WVMA finds no such written reasons provided by the Director in the case of the deletion of the opacity averaging requirement in the proposed rule.

WVMA believes both that the Director must provide written reasons for the deletion of the averaging requirement and that simply stating that this deletion is necessary to conform the proposed rule to existing rules is not sufficient. Rather, WVMA suggests that existing OAQ opacity regulations, including 45 C.S.R. 2 and 45 C.S.R. 7, need to be conformed to the proposed rule (which should be revised to include all of U.S. EPA Method 9 for opacity compliance determination rather than just parts as the OAQ has done in the proposed rule).

5. Proposed 45 C.S.R. 38-4, Compliance Certification by Source Owner or Operator, and 45 C.S.R. 38-5, Enforcement of Emission Standards or Limitations by the Director, cannot be promulgated by the OAQ because they are not specifically required by the Clean Air Act.

The proposed rule contains language which has been both suggested by U.S. EPA in its May 16, 1994, notice of SIP inadequacy and proposed by U.S. EPA in its October 22, 1993 proposed Enhanced Monitoring Program rule at 58 Fed. Reg. 54648. However, as of the July 6, 1994, rulemaking notice by OAQ regarding proposed 45 C.S.R. 38, neither the Enhanced Monitoring Program nor the language proposed by OAQ at 45 C.S.R. 38-4 and 5 have been adopted in final form by U.S. EPA. W.Va. Code § 22-5-4(a)(4), in establishing rulemaking authority of the Director, specifically prohibits the promulgation of a rule which specifies a "particular method of compliance except as specifically required by the 'Federal Clean Air Act' . . . ."

Inasmuch as any U.S. EPA proposed rule cannot be deemed to be specifically required by the federal Clean Air Act until such rule is final, i.e., has progressed from a proposed rule stage through notice and comment and, perhaps, litigation, and is published as a final rule, WVMA believes that OAQ is without statutory authority to promulgate proposed 45 C.S.R. 38-4 and 5. WVMA therefore suggests that substantial revisions to this language are necessary or that the entire rule is premature and should be withdrawn pending finalization of the U.S. EPA proposed Enhanced Monitoring Program and proposed revisions to 40 C.F.R. 51.

6. **Proposed 45 C.S.R. 38-6, Inconsistency Between Rules, is both too subjective as a result of requiring a determination of the Director and applies an incorrect test in resolving inconsistencies.**

The proposed rule requires that a determination be made by the Director in the case of inconsistencies between the proposed rule and other existing rules and that such determination be based upon the application of the more stringent provision, term, condition, method or rule. WVMA believes that the rule can be made less subjective by deleting the phrase "the determination of the Director and such determination shall be based upon" from the proposed rule. In addition to being subjective, WVMA believes that the proposed rule applies an incorrect test to resolve inconsistencies. Defaulting to the more stringent term or condition of two inconsistent rules may result in the application of an older requirement which has neither been revised in accordance with the 1990 Clean Air Act Amendments nor been properly analyzed with respect to counterpart federal programs to determine whether the more stringent of the inconsistent requirements can be justified under the tests established in W.Va. Code § 22-1-3a regarding rules which are more stringent than their federal counterpart.

WVMA believes that constitutional due process requires that the regulated community is entitled to know in advance it's obligations, particularly in light of the extreme civil and criminal penalties which may be incurred for guessing wrong. We therefore suggest that the proposed rule be revised both to exclude the subjective requirement for a Director's determination of which of two or more inconsistent rules

is applicable and to clarify that inconsistencies be resolved by the application of the rule which more closely follows the federal program rule.

### III. CONCLUSION

The WVMA appreciates this opportunity to present our comments and suggestions. We acknowledge the difficulties of keeping pace with changing federal requirements and endorse the OAQ's responsible approach of attempting at least an annual review of its rules. We offer our comments in the spirit of cooperation and trust that our suggestions will assist the OAQ in maintaining the requisite balance between necessary environmental protection and economic stability in West Virginia.

Respectfully submitted this 9th day of August, 1994.

Karen S. Price  
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WVDEP/OAQ RESPONSE TO PUBLIC COMMENT ON  
PROPOSED 45CSR38  
PROVISIONS FOR DETERMINATION OF COMPLIANCE WITH  
AIR QUALITY MANAGEMENT RULES

No oral comments were received at the rule hearing. Six written comments on this proposed rule were received from one organization - the West Virginia Manufacturers Association (WVMA). OAQ response to these comments follows.

1. WVMA suggests that the reference to several Clean Air Act sections in Sub-section 1.5 (Incorporation by Reference) should include a specific date of applicability.

Response: OAQ included the reference to Sections 110(a)(2)A, (C) and (F), 113(a) and 114(a)(3) of the federal Clean Air Act, as amended ("CAAA") in order to identify those sections of the Clean Air Act which USEPA determined to be inadequately addressed without the inclusion of the provisions of Section 4 and 5 of the proposed rule into the State Implementation Plan. After review, OAQ questions whether the reference was appropriately placed in this section and has therefore moved the reference to Section 1.1 "Scope". To address the WVMA concern the reference to the Clean Air Act is clarified to mean Clean Air Act "as amended on November 15, 1990".

2. WVMA questioned the inclusion of the rule stringency determination and the necessity for the constitutional takings determinations in the proposed rule.

These comments note that W.Va. Code §22-1-3 requires the Director of the Division of Environmental Protection to provide a written statement in circumstances in which the Director determines that the rule should not be the same in substance as the counterpart federal regulation. DEP responds that no reason exists to exclude the determination from the rule and that as a matter of Division of Environmental Protection policy, that the specific "Determination of Stringency" section be included in each rule proposed by the individual Offices within the Division. DEP responds that the section as stated is satisfactory. However, OAQ will revise this rule to add a section pertaining to "severability" in the event that this section or other sections of the rule are invalidated.

The WVMA comment concerning the constitutional takings determination notes that W.Va. Code §22-1A-3(c)(2) expressly exempts the assessment in situations in which the state rule-making is required pursuant to an applicable federal rule. The commenter does not believe the Legislature intended for the determination to be part of the rule itself, thus becoming a law if the rule is authorized. The comment notes that an explanation of the takings determination simply be included as part of the rule filing. DEP does not disagree with the comment, but notes that no specific reason exists to exclude the determination, and that as a matter of Division of Environmental Protection policy, that the specific "Constitutional Takings Determination" section be included in each rule proposed by the individual Offices within the Division. OAQ responds that the section as stated is satisfactory.

3. WVMA suggested that the definition of "owner or operator" in the proposed rule was too broad without clarifying that the reference was only to the owner or operator of a stationary source subject to air pollutant emission standards.

OAQ agrees with the comment and has included the word "stationary" in the second line of sub-section 2.5 before the word "sources".

4. There were three elements to the fourth comment of the WVMA, specifically:

(a) that references to federal rules containing emission test and monitoring provisions in Section 3.1 should contain an effective date.

(b) that reference to "other parts of Title 40 of the CFR" in Section 3.1 is too ambiguous and

(c) that Section 3 "deletes opacity averaging requirements established for determining compliance with the federal opacity standards"

With respect to points (a) and (b) above, OAQ agrees with the WVMA comments and has accordingly added the phrase "as in effect on July 1, 1994" after the references to the federal rules in Section 3.1. Also the phrase "and other relevant parts of Title 40 of the Code of Federal Regulations" was deleted from the proposed rule.

OAQ totally disagrees with the premise of the WVMA comment characterized in (c) above and does not believe that the stringency of any rule is affected by the last sentence of Sub-section 3.1 which states "The averaging provisions of Section 2.5 of Method 9 in Appendix A of 40 CFR Part 60 shall only apply when specifically stated to be applicable in an effective rule". Federal emission standards that OAQ has adopted by reference for particulate matter sources usually provide averaging of opacity provisions as per Section 2.5 of EPA Method 9. All OAQ visible emission observers also are certified to measure opacity in accordance with Method 9. Several state particulate emissions regulations, which are part of the federally approved Implementation Plan and that were adopted in the 1970's and 1980's, however, have never contained opacity averaging provisions, contain standards not amenable to such averaging and have been historically enforced without averaging in the manner prescribed by Section 2.5 of EPA Method 9. By inclusion of the sentence referenced above, OAQ is not deleting any provision from any existing rule but is merely assuring that 45CSR38 will not conflict with or contradict any existing rule whether such rule includes or excludes Method 9 opacity averaging provisions.

5. In its fifth written comment WVMA asserts that Sections 4 and 5 of the proposed rule cannot be promulgated because the federal Clean Air Act does not mandate such provisions.

OAQ and many other state air quality management agencies generally agree with WVMA's comment that the limited and simple provisions of 45CSR38 is premature with respect to implementation of full Enhanced Monitoring Programs that will conform to USEPA's 40 CFR Part 64 rules now being developed. OAQ disagrees with WVMA's argument that DEP/OAQ is without statutory authority to promulgate Section 4 and 5 of the proposed rule for the following reasons.

First and foremost, 45CSR38 is being proposed now primarily because USEPA has issued a finding to West Virginia that, absent the provisions of 45CSR38, West Virginia's Clean Air Act Implementation Plan (SIP) is "substantially inadequate to comply with the enhanced monitoring requirements established at Sections 110(a)(2)(A), (C) and (F), 113(a) and (e), and 114(a)(3) of the Clean Air Act, as amended in 1990" (See the attached letter of May 16, 1994, to John M. Ranson). The EPA notice of deficiency required that the State revise its SIP in accordance with Section 4 and 5 of the proposed rule by November 15, 1994.

Second, OAQ neither imposes a new requirement nor does it impose any condition which conflicts with W. Va. Code §22-5-1 et seq. The WVMA cites 22-5-4(4) which prohibits DEP promulgation of a rule which specifies a "particular method of compliance except as specifically required by the Federal Clean Air Act" in its argument that the OAQ is without statutory authority to promulgate 45CSR38. The cited Code provision properly prohibits the DEP/OAQ from mandating only a specific manufacturer, or design of pollution abatement equipment or only a single method of compliance. Based upon long-term legal interpretation and advice, however, OAQ does not believe that W. Va. Code §22-5-4(4) is relevant to the establishment of credible methods or data to determine whether a regulated facility is in compliance with or is violating an emission standard. Furthermore, Sections 4 and 5 of the proposed rule do not mandate that an operator of a regulated source or the DEP Director use any particular compliance determination method but simply clarifies what types of information and methodology for gathering such information may be considered acceptable and credible in determining whether a facility complies with or violates an emission standards established in other DEP/OAQ rules.

6. WVMA also commented that Section 6 in the proposed rules which established an approach for resolving any inconsistencies between 45CSR38 and other rules applied an incorrect test for resolution.

The "test" referred to is a determination by the DEP Director as to which if any inconsistent provisions in this rule and others is more stringent. Section 6 would require application of the more stringent provision as is normally the case when differing provisions overlap or conflict (e.g. MACT vs RACT) OAQ is not convinced that the common "Inconsistency" provision and "test" language is inappropriate or that old, unchanged (and usually already implemented) rules require application of the tests under W. Va. Code §22-1-3 and 3a. However, since OAQ believes that 45CSR38 as currently constructed is primarily intended to clarify and inform rather than to impose any requirement, the "Inconsistency Between Rules" section in this rule will be deleted and Section 6 will now address "Severability" in accordance with the OAQ response to WVMA Comment 2.

#### OTHER NECESSARY CORRECTIONS TO PROPOSED 45CSR38 IDENTIFIED BY WVDEP/OAQ

1. A typo has been corrected in the "Statement of Circumstance". A partial sentence at the end of this paragraph ("The ambient standards." was improperly included in the original draft and has been deleted.

2. A typographical error, specifically the inclusion of a lone "D" at the end of Sub-section 1.1 has been corrected by deletion.

3. A typographical error in Sub-section 3.1 has been corrected in line two by changing the word "Plant" to "Plan".



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
841 Chestnut Building  
Philadelphia, Pennsylvania 19107-4431

RECEIVED  
Director's Office  
MAY 20 1994  
WV Division of  
Environmental Protection

Honorable John M. Ranson, Secretary  
West Virginia Department of Commerce, Labor  
& Environmental Resources  
State Capitol, Room R-151  
Charleston, West Virginia 25305-0310

MAY 16 1994

Dear Secretary Ranson:

The purpose of this letter is two-fold. First, I intend to discuss the enhanced monitoring program of the Clean Air Act. Also, I am also providing additional information regarding the recent U.S. Court of Appeals decision on inspection/maintenance (I/M) program committal State implementation plans (SIPs).

The Environmental Protection Agency (EPA) hereby notifies you pursuant to section 110(k)(5) of the Clean Air Act, 42 U.S.C. § 7410(k)(5), that it finds the SIP for West Virginia substantially inadequate to comply with the enhanced monitoring requirements established at sections 110(a)(2)(A), (C) and (F), 113(a) and (e) and 114(a)(3) of the Clean Air Act, as amended in 1990, 42 U.S.C. §7410(a)(2)(A), (C) and (F), §7413(a) and (e), and §7414(a)(3). The basis for this finding is that West Virginia's existing SIP does not adequately satisfy the requirements of the above-mentioned sections.

EPA calls upon the State of West Virginia to cure the identified inadequacies by revising its SIP. Pursuant to section 110(k)(5), EPA is requiring West Virginia to revise its SIP by November 15, 1994. If West Virginia fails to submit a curative SIP revision to EPA in a timely manner or EPA disapproves the submitted revision, EPA would be compelled by section 110(c)(1) of the Clean Air Act to promulgate a Federal implementation plan (FIP) to correct the deficiencies. Enclosure 1 contains a more detailed description of the rationale and requirements of this SIP Call.

Further, we would like to follow up on the April 6, 1994 letter sent to your Governor by Ms. Mary Nichols, EPA Assistant Administrator for Air and Radiation, concerning the U.S. Court of Appeals March 8, 1994 Order regarding committal SIPs. On April 11, 1994, EPA filed a Motion for Clarification and Partial Amendment of the March 8 Order. In an April 22, 1994 Amended Order and a full opinion dated May 6, 1994, recently received by the Agency, the Court clarified certain aspects of its prior Order. (Copies of both Orders and the decision are included as part of enclosure 2.)

We have not fully assessed the precise consequences of the opinion and Amended Order at this time. Nonetheless, given the directives provided in the Court's Amended Order and the potential ramifications of the Court's decision and opinion, it would be to West Virginia's advantage to complete action on all of the committal SIP programs currently under development as soon as possible.

The Amended Order requires EPA to propose action on all I/M programs, submitted to date, by July 15, 1994 and take final action on all such plans by September 15, 1994. In addition, the Amended Order clarifies that any state that failed to submit a complete I/M program by November 15, 1993, (the date EPA had set in its I/M rule), or whose I/M program EPA disapproves, will be subject to a mandatory sanctions clock according to the schedule provided in section 179 of the Act. Under that section, an eighteen month clock begins to run on the date EPA finds that a state failed to submit a plan or submitted an incomplete plan, or disapproves a plan. The clock stops running when the state cures the particular deficiency. If the state does not cure the deficiency within eighteen months, the first of two mandatory sanctions is imposed, with the second sanction following 6 months later if the deficiency is still not cured. Finally, the Amended Order states: "Regardless of cure, however, a Federal Implementation Plan will be imposed on any state that does not submit and obtain approval of a SIP within two years after a deficiency determination."

As noted above, the Agency is currently reviewing the April 22 Amended Order and May 6 opinion in order to assess the impact on all of the I/M program submittals, as well as on the requirements for reasonably available control technology to control nitrogen oxide emissions. Moreover, the Court's opinion does not specifically address other programs for which EPA has accepted committal SIPs. These other potentially affected programs include the transportation control measures to offset increased emissions from increased vehicle use, and certain "non-core" provisions for the preconstruction review of new and modified major air pollution sources. We expect to provide additional information and analysis regarding this matter as soon as possible.

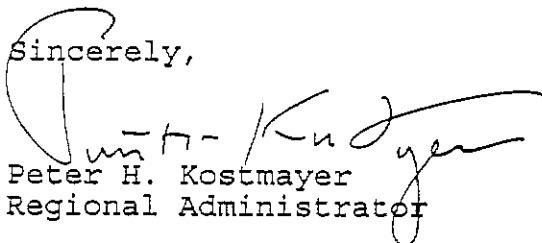
The NRDC committal SIP litigation, among other things, provides strong evidence of the close attention being paid to the SIP programs administered under the Clean Air Act, as amended in 1990. This development poses a significant challenge to all of us. We, therefore, urge West Virginia to move as quickly as possible to submit any Clean Air Act mandated programs for which the Act's submittal deadline has passed. We will work closely with your environmental program staff to assist in the development and submittal of the required programs in order to achieve our ultimate goal of attaining the air quality standards.

In addition to these programs, West Virginia has submitted a committal SIP revision for a sulfur dioxide (SO<sub>2</sub>) nonattainment area in Hancock County on August 11, 1993. EPA previously stated that this SIP revision was required by section 191(b) of the Clean Air Act to be submitted by May 15, 1992. On June 15, 1992, EPA made a finding of failure to submit for the required SIP revision. However, EPA recently concluded that section 191(b) of the Act did not in fact require the SIP revision to be submitted by May 15, 1992. The June 15, 1992 finding of failure to submit a SIP revision by May 15, 1992 was erroneous. As a result, no sanctions may be applied to West Virginia based on that finding.

We would like to take this opportunity to provide you with the status of all relevant SIP actions before EPA, or due to EPA. Enclosure 2 indicates the actions that are, or may be, affected by the recent Court decision on committal SIPs. We have also provided a third enclosure listing, on a Regional basis, the status of findings/sanctions clocks for actions required by the 1990 amendments.

I recognize that the schedules for SIP submittal outlined above are ambitious, but I believe the challenge can be met if we work together. I look forward to this cooperative effort. Should your staff have any questions concerning the enhanced monitoring SIP Call or the information on committal SIPs, please contact Thomas J. Maslany, Director, Air, Radiation and Toxics Division at 215 597-9390.

Sincerely,



Peter H. Kostmayer  
Regional Administrator

Enclosures (3)

cc: Honorable Gaston Caperton  
Governor of West Virginia

Honorable Fred VanKirk, Commissioner  
West Virginia Department of Highways

Honorable David Gendel, Regional Administrator  
Federal Highway Administration  
Region III

Honorable Sheldon Kinbar, Regional Administrator  
Federal Transit Administration  
Region III

Mr. David Callahan, Director  
Division of Environmental Protection  
West Virginia Department of Commerce, Labor,  
& Environmental Resources

Mr. G. Dale Farley, Chief  
Office of Air Quality  
Division of Environmental Protection  
West Virginia Department of Commerce, Labor,  
& Environmental Resources

Mr. James K. Hambright, Executive Director  
Mid-Atlantic Regional Air Management Association

## ENCLOSURE 1

### Enhanced Monitoring SIP Call

Section 114 of the Clean Air Act was amended in 1990 to require the Administrator of EPA to promulgate rules implementing an enhanced monitoring and compliance certification program for major stationary sources of air pollution. The primary purpose of this program is to reduce air pollutant emissions by requiring sources to monitor compliance with applicable emission limitations or standards on a continuing basis over time. In contrast to the compliance program before the 1990 Amendments, the monitoring data collected through this program would serve as the basis for a source to certify compliance, and could be used by EPA and States as direct evidence of an enforceable violation of the underlying emission limitation or standard. Since the 1990 Amendments, EPA has been evaluating the available alternatives for implementing this program, and decided upon the approach set forth in the proposed Enhanced Monitoring Program Rule, which was published in the *Federal Register* on October 22, 1993.

The Agency has determined that certain Federal regulations and West Virginia's existing SIP preclude EPA and West Virginia from fully implementing this program because the regulations and SIP may be interpreted to limit the types of testing and monitoring data that may be used for determining compliance and establishing violations. Further, West Virginia's existing SIP may be interpreted to restrict EPA's ability to use any credible evidence of a violation in enforcement actions. These deficiencies were identified in the October 22, 1993 proposed Enhanced Monitoring Program Rule. In that proposal, the Agency proposed conforming amendments to its own Federal regulations. In addition, EPA notified states of its intent to issue a SIP Call requiring states to revise their SIPs to comply with the requirements of sections 110(a)(2)(A), (C) and (F), 113(a) and (e) and 114(a)(3) of the Clean Air Act.

To provide sufficient time to adopt and submit the required SIP revision, EPA has established a submittal date of November 15, 1994. This is the anticipated date for final operating permit program approval. This timeframe will ensure that West Virginia's SIP is revised before it begins to issue the first permits under its title V operating permits program. In the event that EPA must promulgate a FIP, the Agency intends to take final action by June 30, 1995 pursuant to the language in the proposed Enhanced Monitoring Program Rule.

In order to achieve the desired goal, EPA is suggesting that the following language be incorporated into an appropriate section of the West Virginia State implementation plan:

[Section] Compliance Certification. Notwithstanding any other provision in any plan approved by the Administrator, for the purpose of submission of compliance certifications the owner or operator is not prohibited from using the following in addition to any specified compliance method:

- (1) An enhanced monitoring protocol approved for the source pursuant to 40 CFR part 64.
- (2) Any other monitoring method approved for the source pursuant to 40 CFR 70.6(a)(3) and incorporated into a federally-enforceable operating permit.

[Section] Enforcement. (a) Notwithstanding any other provision in the West Virginia implementation plan approved by the Administrator, any credible evidence may be used for the purpose of establishing whether a person has violated or is in violation of any such plan.

(1) Information from the use of the following methods is presumptively credible evidence of whether a violation has occurred at a source:

(A) An enhanced monitoring protocol approved for the source pursuant to 40 CFR part 64.

(B) A monitoring method approved for the source pursuant to 40 CFR 70.6(a)(3) and incorporated in a federally-enforceable operating permit.

(C) Compliance test methods specified in the applicable plan approved in this [part].

(2) The following testing, monitoring or information gathering methods are presumptively credible testing, monitoring or information gathering methods:

(A) Any federally-enforceable monitoring or testing methods, including those in 40 CFR parts 51, 60, 61 and 75.

(B) Other testing, monitoring or information gathering methods that produce information comparable to that produced by any method in (1) or (2) (A).

## ENCLOSURE 2

### WEST VIRGINIA -- COMMITTAL SIP STATUS REPORT

#### I/M Committal SIP:

West Virginia did not submit an I/M committal SIP revision by November 15, 1992. As a result of West Virginia's failure to submit an I/M committal SIP, EPA made a finding of failure to submit in a January 15, 1993 letter to the Governor. This finding triggered the start of the 18-month sanctions clock, which is due to expire on July 15, 1994. EPA is currently reviewing West Virginia's November 12, 1992 redesignation requests for its three moderate ozone nonattainment areas. If approved, these actions would eliminate the I/M requirement for the State and remove the sanctions clock for this program.

#### NOx RACT Committal SIP:

West Virginia was required to submit an oxides of nitrogen (NOx) reasonably available control technology (RACT) SIP by November 15, 1992. A February 5, 1993 memorandum from John Seitz, Director, EPA Office of Air Quality Planning and Standards entitled, "Guidance on Issuing Findings for Committal Oxides of Nitrogen (NOx) Reasonably Available Control Technology (RACT) Rules," set a committal SIP submittal date of April 15, 1993. As a result of West Virginia's failure to submit a NOx RACT committal SIP by that date, EPA made a finding of failure to submit in a April 23, 1993 letter to the Governor. This finding triggered the start of the 18-month sanctions clock. On August 10, 1993 West Virginia submitted a complete NOx RACT committal SIP, thus halting the sanctions clock. We are currently reviewing the impact of the Court's action on this program as well as the need for clarification from the Court. EPA is also currently reviewing West Virginia's November 12, 1992 redesignation requests for its moderate ozone nonattainment areas.

#### SO2 Committal SIP:

EPA informed West Virginia on January 30, 1991 that a SIP revision for the New Manchester-Grant SO<sub>2</sub> nonattainment area was due pursuant to section 191(b) by May 15, 1992. On August 11, 1993, West Virginia submitted a committal SIP for the New Manchester-Grant Magisterial District, Hancock County SO<sub>2</sub> nonattainment area to satisfy section 191(b) of the Clean Air Act. During the process of reviewing the SIP submittal, EPA determined that it inaccurately interpreted this portion of the Act. It has been found that section 191(b) is not applicable in this situation and that a revision was not due on that date. Section 191(b) required the submittal of SIP revisions for nonattainment areas lacking a fully approved implementation plan by May 15, 1992. EPA now believes that West Virginia does not lack such a plan.

Based on its knowledge at the time, EPA made a finding of failure to submit a SIP revision for the New Manchester-Grant SO<sub>2</sub> nonattainment area in a June 15, 1992 letter to the Governor. That finding was erroneous and is hereby withdrawn. It follows that EPA may not impose any sanctions on West Virginia pursuant to section 179 based upon the June 15, 1992 finding of failure to submit.

It should be noted that West Virginia is nonetheless obligated to resolve the outstanding nonattainment area issue in Hancock County. Although West Virginia does not lack a fully approved SO<sub>2</sub> nonattainment plan for the New Manchester-Grant Magisterial District, the existing plan was previously deemed "inadequate" pursuant to section 110. Inadequate plans were addressed in the 1990 Amendments at section 192(c). EPA will send a letter to the Office of Air Quality further detailing our interpretation of the Act and outlining the requirements associated with an inadequate SO<sub>2</sub> nonattainment implementation plan.



**DIVISION OF ENVIRONMENTAL PROTECTION**

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August 9, 1994

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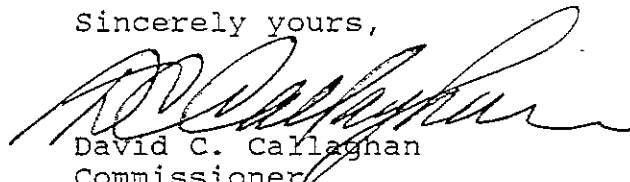
RE: CSR-45-38 - Provisions for Determination of  
Compliance with Air Quality Management Rules

Dear Ms. Cooper:

This is to advise you that I am giving approval for the filing of the above-captioned rule with your Office and with Legislative Rule-Making Review Committee as an agency-approved rule.

Your cooperation in this regard is very much appreciated. If you have any questions or require additional information, please feel free to contact Roger T. Hall at 759-0515.

Sincerely yours,



David C. Callaghan  
Commissioner  
Bureau of Environment

DCC;RTH:cc

Attachment