

45CSR8
AMBIENT AIR QUALITY STANDARDS

RESPONSE TO COMMENTS

The WV Department of Environmental Protection (DEP), Division of Air Quality (DAQ) commenced the public comment period for proposed legislative rule 45 C.S.R. 8 on June 7, 2019. The public comment period concluded on July 9, 2019 after satisfying the minimum 30-day period. A public hearing was held at the DEP Headquarters located at 601 57th Street SE, Charleston WV in the Dolly Sods Conference Room on July 9, 2019 to accept oral and written comments on the proposed revisions to legislative rule 45 C.S.R. 8. Any comments received after this time are considered ex parte communications and cannot be considered in accordance with WV Code Chapter 29A Article 3.

No written comments were received regarding the proposed revisions to rule 45 C.S.R. 8. One attendee present at the public hearing provided verbal comments. A summary of the verbal comments presented by Daniel Lutz, Conservation District Supervisor of Jefferson County, are provided below along with the response. The full comment can be found in the public hearing transcript, also part of the formal rulemaking record.

There were no changes made to 45 C.S.R. 8 as a result of the comments.

COMMENT A: The rule has very serious impact on many of his constituents starting with ozone. Ozone will deposit itself in the small hills and veils in the lower Shenandoah Valley and will block the Krebs cycle used by all plants to convert sugars for the next generation. He has a study on soy beans that shows the levels of ozone to be discharged by a proposed operation in Jefferson County will increase the production of alluvium by up to 50%. The commenter states the farmers will be bankrupted by excess ozone this facility will be dispensing.

RESPONSE A: 45 C.S.R. 8 adopts and incorporates by reference the primary and secondary national ambient air quality standards (NAAQS) established by the U.S. Environmental Protection Agency (EPA). Primary NAAQS provide public health protection, including protecting the health of "sensitive" populations such as asthmatics, children, and the elderly. Secondary NAAQS provide public welfare protection, including protection against decreased visibility and damage to animals, crops, vegetation, and buildings. The NAAQS pollutants are sulfur oxides, particulate matter, carbon monoxide, ozone, nitrogen dioxide, and lead.

The changes proposed for 45 C.S.R. 8 include the retention of the 2010 sulfur dioxide (SO₂) NAAQS that is a final action by the U.S. EPA based on its review of the primary NAAQS for sulfur oxides and its decision to retain the current standard without revision, effective April 17, 2019.

Regarding ozone, the U.S. EPA tightened the primary and secondary ozone NAAQS in October 2015. The WV DAQ adopted and incorporated by reference the revised 2015 ozone NAAQS under 45 C.S.R. 8 effective June 1, 2017. Every West Virginia county is in attainment with the 2015 primary and secondary ozone NAAQS thereby protecting public health and public welfare, including damage to animals, crops, and vegetation.

Chapter 22 of the West Virginia State Code prohibits DAQ legislative rules from being any more stringent than any federal rule except to the limited extent that the director first makes a specific written finding for any such departure that there exists scientifically supportable evidence for such rule or program reflecting factors unique to West Virginia or some area thereof.

COMMENT B: On the issue of volatile organic compounds (VOCs) from which ozone is coming, there are over 400 VOCs in a list compiled by the U.S. EPA. Of these, 150 of which do not exist in nature. The commenter stated he has yet to receive a list from either the WVDEP or the firm that plans to discharge these VOCs into the atmosphere to create ozone and other poisons that go with them, so can't say exactly how much ozone will be discharged into the atmosphere.

RESPONSE B: This comment is not germane to proposed legislative rule 45 C.S.R. 8.

COMMENT C: We cannot afford to weaken the sulfureted particulate matter regulations. In fact, the only thing we can afford is to strengthen these regulations.

RESPONSE C: There is no proposal to weaken 45 C.S.R. 8. The adopted by reference documents provided at the WV Secretary of State website (<http://apps.sos.wv.gov/adlaw/csr/>) for this proposed rule include the final action by the U.S. EPA for the review of the primary NAAQS for sulfur oxides and the decision to retain the current standard without revision, effective April 17, 2019. The EPA's last review of the sulfur dioxide primary NAAQS was completed in 2010 when the standard was significantly strengthened by establishing a 1-hour standard and revoking the 24-hour and annual standards. The 1-hour standard was established to provide protection from respiratory effects associated with exposures as short as a few minutes based on evidence from health studies that documented respiratory effects in people with asthma exposed to SO₂ for 5 to 10 minutes while breathing at elevated rates.

COMMENT D: There are also sulfides that will come from the carbonyl sulfides that this facility will be discharging as part of the revisions to which DAQ is speaking. More data is needed on how much is going to be emitted and what it's composition will be before these regulations are changed.

RESPONSE D: National ambient air quality standards that are adopted and incorporated by reference under 45 C.S.R. 8 are not the same as single facility emissions limitations. Single

facility emissions limitations are established via the air quality permitting process. This comment is not germane to this proposed rulemaking.

COMMENT E: This facility (not mentioning the name) is proposing to discharge 900 kg/yr of lead. That amount of discharge is enough to cause learning disabilities in 30,000 plus children in West Virginia and neighboring states that we cannot afford.

RESPONSE E: 45 C.S.R. 8 does not establish emissions limitations for specific facilities, rather it establishes and adopts primary and secondary NAAQS established to be protective of human health and welfare. National primary ambient air quality standards define levels of air quality which the U.S. EPA determines necessary, with an adequate margin of safety, to protect the public health. National secondary ambient air quality standards define levels of air quality which the U.S. EPA determines necessary to protect the public welfare from any known or anticipated adverse effects of a pollutant. The purpose of this rule is to incorporate by reference the primary and secondary NAAQS established by the U.S. EPA and to incorporate by reference ambient air monitoring reference methods and equivalent methods.

All counties in WV are in attainment with the primary and secondary lead NAAQS.

Single facility emissions limitations are established via the air quality permitting process.

COMMENT F: The commenter requested that these rules be held in abeyance until October 31, 2019 when the analysis and evaluation period ends, and in that period for the WV DEP to hold meetings around the state instead of like this where we just come in and expound endlessly. The commenter requests to take sworn testimony from scientists and people whose livelihood depend on us doing our jobs.

RESPONSE F: The proposed revisions to 45 C.S.R. 8 incorporate by reference the federal actions identified below. The analyses for these actions are complete; each of these actions is a final federal action. The request to delay until October 31, 2019 pending additional analysis and evaluation is not related to any the Division of Air Quality rules proposed for the 2020 legislative session.

Review of the Primary National Ambient Air Quality Standards for Sulfur Oxides; This final federal action became effective April 17, 2019 following the U.S. EPA's review of key aspects of the currently available health effects evidence, quantitative risk and exposure information, advice from the Clean Air Scientific Advisory Committee (CASAC), and public comments. The rationale for U.S. EPA's decision to retain the current SO₂ standard can be found in the federal register notice found at 84 Fed. Reg. 9866, March 18, 2019 and provided on the WV Secretary of State website under the "Adopted By Reference" file under the proposed rule 45 C.S.R. 8.

Ambient Air Monitoring Reference and Equivalent Methods: Designation of One New Equivalent Method - The U.S. EPA designated, under the provisions of 40 C.F.R. Part 53, one new equivalent method for measuring concentrations of ozone (O₃) in ambient air. The equivalent method is an automated method (analyzer) utilizing the measurement principle based on UV photometry. As a designated equivalent method, this method is acceptable for use by States and other air monitoring agencies. Additional details provided by the *Director of the National Exposure Research Laboratory* can be found in the federal register notice found at 84 Fed. Reg. 11973, March 29, 2019 and provided on the WV Secretary of State website under the “Adopted By Reference” file under the proposed rule 45 C.S.R. 8.

Ambient Air Monitoring Reference and Equivalent Methods: Designation of One New Reference Method - The U.S. EPA designated, under the provisions of 40 C.F.R. Part 53, one new reference method for measuring concentrations of nitrogen dioxide (NO₂) in ambient air. The reference method for NO₂ is an automated method (analyzer) utilizing the measurement principle based on gas phase chemiluminescence. As a designated reference method, this method is acceptable for use by States and other air monitoring agencies. Additional details provided by the *Director of the National Exposure Research Laboratory* can be found in the federal register notice found at 83 Fed. Reg. 25451, June 1, 2018 and provided on the WV Secretary of State website under the “Adopted By Reference” file under the proposed rule 45 C.S.R. 8.

Ambient Air Monitoring Reference and Equivalent Methods: Designation of One New Reference Method - The U.S. EPA designated, under the provisions of 40 C.F.R. Part 53, one new reference method for measuring concentrations of carbon monoxide (CO) in ambient air. The new reference method for CO is an automated method (analyzer) utilizing the measurement principle based on non-dispersive infrared (NDIR) spectroscopy. As a designated reference method, this method is acceptable for use by States and other air monitoring agencies. Additional details provided by the *Director of the National Exposure Research Laboratory* can be found in the federal register notice found at 84 Fed. Reg. 24508, May 28, 2019 and provided on the WV Secretary of State website under the “Adopted By Reference” file under the proposed rule 45 C.S.R. 8.

COMMENT G: We must do something better than this, than just a rubber stamp handed to the legislature, and tell them to put it through committee and put into law.

RESPONSE G: The DEP adheres to the West Virginia State Administrative Procedures Act under Chapter 29A of the W. Va. Code.

COMMENT H: Carbon dioxide could be converted to eliminate this firm’s pollution emissions with an industrial centrifuge that the commenter’s cousin has ready and waiting to be shipped to be used by this firm. Using these to take VOCs, dangerous emissions, out of our atmosphere to begin with, separating them by molecular weight and then rescinding them or redistributing them as the valuable industrial chemicals they are. It would be a win-win-win for the State-Jefferson County - and the Mid-Atlantic region.

RESPONSE H: Carbon dioxide (CO₂) is not regulated under 45 C.S.R. 8. Furthermore, this rule does not establish emission limits for specific “firms”. This comment is not germane to proposed rule 45 C.S.R. 8.

THERE WEREN'T ANY WRITTEN COMMENTS RECEIVED FOR 45CSR8. ORAL COMMENTS
RECEIVED AT THE PUBLIC HEARING ARE PROVIDED IN THE TRANSCRIPT FOR 45CSR8
(AMBIENT AIR QUALITY STANDARDS)

ORIGINAL

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

In re: 45CSR8 -Ambient Air Quality Standards

Transcript of proceedings had at a public hearing in the above-styled matter taken at the West Virginia Department of Environmental Protection, Division of Air Quality, Conference Room, 601 57th Street, S. E., Charleston, West Virginia, commencing at 6:25 p.m., on the 9th day of July 2019, pursuant to notice.

MISSY L. YOUNG, C.C.R.
POST OFFICE BOX 13622
SISSONVILLE, WEST VIRGINIA 25360
304-539-6192

PROCEEDINGS

MS. JENNINGS: Good evening and thank-you for coming tonight. My name is Laura Jennings and I am a Technical Analyst with the WV Department of Environmental Protection, Division of Air Quality.

There will be separate public hearings for each of the five Division of Air Quality rules proposed for the 2020 legislative session. The purpose of this public hearing is to receive public comments on the record regarding the proposed DAQ rules. Unlike a public meeting, I will not be responding to questions. All comments received will be addressed in a response to comment document that will be part of the official rule making record on the Secretary of State's website.

If you want to submit oral comments, please raise your hand when I state that the floor is open for comments. When I call on you, clearly state your name and indicate if you are representing any group or organization. Please keep the comments on topic and limit the comment to 10 minutes each. If you have additional comments beyond the 10 minute time frame, please submit the comments in writing.

If you haven't already done so, please put your name on the sign-in sheet before leaving. If you have

1 written comments that you would like to submit, you can
2 hand then to any of us.

3 The public hearing for the proposed legislative
4 rule 45CSR8 - Ambient Air Quality Standards rule will now
5 come to order on this 9th day of July 2019 at the West
6 Virginia Department of Environmental Protection
7 Headquarters.

8 Comments and testimony will be accepted until the
9 close of this hearing and will be made part of the
10 rulemaking record. Any question regarding revisions to the
11 rules should be included with your comments, and any such
12 question will be addressed as part of the response to
13 comments in the rulemaking record.

14 The purpose of this public hearing is to accept
15 comments on proposed revisions to rule 45CSR8 - Ambient Air
16 Quality Standards. This rule establishes and adopts ambient
17 air quality standards for sulfur oxides, particulate
18 matter, carbon monoxide, ozone, nitrogen dioxide and lead,
19 equivalent to those primary and secondary National Ambient
20 Air Quality Standards established under the Clean Air Act and
21 promulgated by the United States Environmental Protection
22 Agency under 40CFR Part 50.

23 This rule also establishes and adopts ambient air

1 monitoring reference methods and equivalent methods
2 promulgated by the U.S. EPA under 40CFR Part 53. Revisions
3 to this rule include amendments promulgated by EPA under
4 40CFR Parts 50 and 53 as of June 1, 2019.

5 Upon authorization and promulgation of 45CSR8,
6 the rule will be submitted to the EPA as a revision to the
7 State Implementation Plan, pursuant to the federal Clean
8 Air Act.

9 The floor is now open for comments. Please state
10 your name and any affiliation.

11 MR. LUTZ: I assume it's being directed to
12 me. My name is Daniel Lutz, I am here representing my
13 constituents as I am Conservation District Supervisor from
14 Jefferson County. The rules have a very serious impact on
15 many of my constituents.

16 To start out with, ozone. Ozone is a by products
17 of the decomposition of a volatile organic compound in the
18 ambient atmosphere upon discharge. Ozone molecularly known
19 as O_3 is heavier than air. It descends to the surface and
20 especially in small hills and valleys that we have out in the
21 lower Shenandoah Valley. It will deposit itself there. In
22 so doing, it will block the Krebs cycle used by all plants
23 to convert all sugars -- sunlight into sugars and therefore

1 food for the plants and seeds for the next generation.

2 The Krebs cycle will be disrupted and - - I could
3 submit a study from Clark and Glenn, et al., who have shown
4 their studies, on soy beans in particular, that levels of
5 ozone to be discharged such as the proposed operation
6 Jefferson County - - who's name I will not mention - - will
7 increase the production of such alluvium by up to 50
8 percent.

9 Now when a soy bean farmer is operating on a net
10 margin, of when you are dealing with seven dollars a bushel
11 of soy beans, and your net margin and what you have receive
12 for the beans and what it costs you to produce the beans is
13 four to five cents. It does not take a mathematical genius
14 to figure out that these farmers will be bankrupted by the
15 excess ozone that this facility will be dispensing.

16 Second, on the issue of volatile organic
17 compounds from which the ozone is coming, I also have a
18 list of 400 volatile organic compounds compiled by the
19 United States Department of Environmental Protection
20 Agency. Of these 400-plus, 150 do not exist in nature.
21 However, the ones that do, I have yet to receive a risk
22 from you, the West Virginia DEP, or the firm that plans to
23 discharge these compounds into the atmosphere to create the

1 ozone and the other poisons that go with them. I have yet
2 to see that. So, we can't say how much ozone is going to
3 be discharged into our atmosphere.

4 Then there is concern about the sulfureted
5 particulate matter described because the particulate matter
6 is in three grades, those greater than 10 microns, those
7 smaller than 10 microns but larger than 2.5 microns and
8 those smaller than 2.5 microns.

9 I want this illustration of scale to be
10 especially noted. Most pollens from nature's flowers are in
11 the range of 80 to 100 microns each, that's the diameter.
12 The smallest pollen of which I am familiar in our
13 environment is that of the flower, the forget me not, which
14 is six microns. That is less than 10 percent of what most
15 pollens are. These 10 microns and under will affix
16 themselves to the pollen of flowers and trees and such and
17 therefore be ingested by the bees. We already have a
18 crisis with honeybees in the eastern panhandle as it is. I
19 have not seen but two buzzing honeybees this season, where
20 I used to see thousands.

21 So, we can not afford a weakening, the changing,
22 in fact, the only thing we can afford is to strengthen
23 these regulations. There are also sulfides that will come

1 from the carbonyl sulfides that this facility will be
2 discharging in our part of the rule tradition of which you
3 are speaking.

4 We need more data on how much is going to be
5 emitted and what it's composition will be because there are
6 several hundred carbonyl compounds of which sulphur radical
7 emits itself. So, we need more data before you change these
8 regulations.

9 Finally, the lead. This facility - - as I said I
10 will not mention the name - - is proposing to discharge 900
11 kilograms rounds of lead per year. Now, 900 kilograms of
12 lead and lead salts is enough to cause learning
13 disabilities in 30 thousand-plus children. Now, if that is
14 something that West Virginia and our neighboring states can
15 afford, I think not.

16 I would ask that these rules, that I also
17 mentioned this last night that the Water Quality
18 re3mediatio hearing be held in abeyance till 31 October, of
19 this year, when the analysis period ends and the evaluation
20 period ends, and in that period for the West Virginia DEP
21 to hold meetings around the state instead of like this
22 where we just come in and expound endlessly and everybody
23 writes it down and says this is what we are going to do.

1 Take sworn testimony from scientist - - whom we have in
2 abundance, experts whom we have in abundance - - people
3 whose livelihood depend on us doing our jobs, I as an
4 elected official and you as State employees.

5 We must do something better than this, than just
6 a rubber stamp handed to the legislature, and tell them to
7 put it through committee and put it into law. We are past
8 the point in our environment, our world, where we can't
9 afford this anymore. One hundred and forty-two thousand
10 tons of carbon dioxide could be converted - - I could make
11 two phone calls and have a representative from the firm
12 that's been doing this since 2009 profitably - - could go
13 well over half to eliminating this firms pollution
14 emissions.

15 Then I have a cousin - - this isn't nepotism, he
16 called me I didn't seek him out - - but he has industrial
17 centrifuges that are ready and waiting to be shipped to be
18 used by this firm. Using these to take these volatile
19 emissions, dangerous emissions, out of the atmosphere to
20 begin with, separating them by molecular weight and then
21 rescinding them or redistributing them as the valuable
22 industrial chemicals that they are. It would be a win, win,
23 win for West Virginia, Jefferson County, - - can afford the

1 win for the Mid-Atlantic region. We can afford to do no
2 less.

3 I also, I have to insist upon these hearings
4 being conducted because there are other issues in other
5 parts of the State that are just as volatile and just as
6 dangerous as what we are facing in the Eastern Panhandle.
7 I'm here to represent my constituents. That's why I came
8 here - - I've wasted my time, I think. But I'm here to do
9 the best I can for them. I'll have to see what happens. I
10 thank you for your time.

11 MS. JENNINGS: Thank you for your comments. There
12 being nothing further, this public hearing for the proposed
13 rule 45CSR8 is concluded.

14 (WHEREUPON, the hearing was
15 concluded.)
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STATE OF WEST VIRGINIA,

COUNTY OF KANAWHA, to-wit:

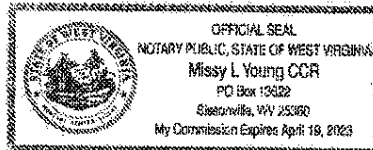
I, the undersigned, Missy L. Young, a
Certified Court Reporter and Notary Public within and for
the State of West Virginia, duly commissioned and
qualified, do hereby certify that the foregoing, was taken
to the best of my skill and ability, a true and accurate
transcript of all the proceedings had in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

Given under my hand and official seal this
12th day of July, 2019.



Certified Court Reporter
Notary Public for the State of West Virginia

My commission expires April 19, 2023.





west virginia department of environmental protection

Public Hearing: July 9, 2019 at 6:00 PM,
DEP Building 601 57th Street SE, Charleston, WV - Dolly Sods Conference Room
Proposed Division of Air Quality 2020 Legislative Rules
45CSR8, 45CSR16, 45CSR25, 45CSR34 and 45CSR40
SIGN-IN SHEET

The information provided below becomes part of the public record related to this topic.

Name (please print)	Address	Organization	Phone	E-mail	Comment
Danny Lutz	175 Wheelbarrow Rd	CT	304/8865066 304/8865071	p.lutz@ct.gov	701 CT
Missy					702 PA
Laura Crowder		DAQ		Laura.M.Crowder@wv.gov	N
Pam Kendrick		DAQ			
Stephanie Hammonds		DAQ			N
Laura Jennings		DAQ			N