

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 45CSR8 on June 2, 2023. The public comment period concluded July 6, 2023, after satisfying the 30-day period. A public hearing was held virtually on July 6, 2023. The purpose of the public comment period and hearing was to accept oral and written comments on the proposed revisions to 45CSR8.

There were two written comments received during the public comment period from: Mr. Duane Nichols of Mon Valley Clean Air Coalition (MVCAC) and Mr. James Kotcon, Conservation Chair of WV Chapter of Sierra Club (WV SC). One person provided oral comments during the public hearing in addition to providing written comments: Mr. James Kotcon, Conservation Chair of WV Chapter of Sierra Club (WV SC). A summary of the consolidated comments and responses are provided below.

The original comments received and the public hearing transcript are provided as part of the formal rulemaking record. There were not any changes made to 45CSR8 after reviewing and considering the comments received.

Commenters 1: Mon Valley Clean Air Coalition

COMMENT 1: Written comment periods need to end no earlier than three days after a verbal comment period, to give all concerned time to revise and extend their thoughts, ideas, and written comments. This is both logical and necessary for a rational a rational approach to the public role.

RESPONSE 1: The purpose of a public hearing is different than that of a public meeting. A public hearing is regulatory in nature with the sole purpose of receiving oral comments on the record in addition to or in lieu of written comments, unlike a public meeting that includes an interactive and educational component in addition to taking comments. The requirement for public hearings is to provide a full 30-day public notice period prior to the public hearing. The rulemaking timeline is dictated by Office of the Secretary of State and does not require a public hearing, although the DAQ does so to meet other federal regulatory requirements. The public comment period commenced June 2, 2023 and concluded July 6, 2023, allowing more than 30-days required by federal regulatory requirements.

Commenter 2: WV Siera Club

COMMENT 2: We support updating the rule to incorporate the latest EPA standards.

RESPONSE 2: Thank you for your comment, a response is not necessary.

COMMENT 3: We urge DEP to consider more stringent standards where it is needed to protect public health.

RESPONSE 3: The W. Va. State Code¹ precludes the DAQ from applying standards more stringent than any federal rule or program, 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. The primary purpose of 45CSR8 is to adopt the National Ambient Air Quality Standards (NAAQS) as established by the U.S. EPA. The primary standards are designed to protect public health with an adequate margin of safety. West Virginia is currently in attainment with all NAAQS.

COMMENT 4: The concept of extending the comment period for two to three days after the public hearing is useful to consider in future such public hearings.

RESPONSE 4: Please see RESPONSE 1.

¹ W. Va. Code §22-5-4.



Jennings, Laura M <laura.m.jennings@wv.gov>

Tonight's Hearing

Duane Nichols <nichols330@gmail.com>
To: Laura.M.Jennings@wv.gov
Cc: depadvocate@wv.gov

Thu, Jul 6, 2023 at 4:59 PM

Written comment periods need to end no earlier than three days after a verbal comment period, to give all concerned time to revise and extend their thoughts, ideas, and written comments.

This is both logical and necessary for a rational a rational approach to the public role.

Duane Nichols, MVCAC

Sent from my iPad



Sierra Club

West Virginia Chapter

P.O. Box 4142
Morgantown, WV 26504

July 6, 2023

Laura Jennings
WVDEP – Division of Air Quality
601 57th St., SE
Charleston, WV 25304
Via e-mail to: Laura.M.Jennings@wv.gov

Re: Comments on Air Quality draft rules

Dear Ms. Jennings:

Please accept the following comments on behalf of the WV Chapter of Sierra Club, and our approximately 2600 members.

45-CSR-1. Alternative emissions limitations during Startup and shutdown operations.

In general, we support the proposed changes as important steps to limit pollution emissions. Many facilities emit large amounts of pollution during Startup, Shutdown and Malfunction (SSM) events, often at levels that have disproportionate impacts on air quality and that greatly exceed the annual permit limits for normal operations. Please consider the following additional suggestions:

- 1) Editorial Note. The “Summary of changes in the rule” indicates that “malfunctions” was removed from the title of the rule, but the word removed is “maintenance”.
- 2) The revisions do not appear to address Alternative Emissions Limits (AELs) during “malfunctions”. Although section 2.6 defines malfunction, and section 2.11 defines SSM to include malfunction, it is not clear how emissions during a malfunction are monitored or limited, or how these apply to enforcement, and the current draft of the rule does not address these. Likewise, the language regarding SSM in other rules (e.g., 45-CSR-2-9) addresses malfunctions but is vague as to how emissions limits would be enforced. The failure to include emissions during malfunctions would expose citizens to air pollution that may threaten their health, and leaves these citizens with few options other than “hold your breath”. It also reduces any incentive for owners or operators to minimize such malfunctions. **We recommend that the rule be revised to incorporate monitoring and reporting requirements and enforceable limits for emissions during malfunctions. The rule should explicitly state that excess emissions resulting from malfunctions should be treated as a violation.** We note that regulators and citizens can use discretion as to whether events were preventable, and that a federal court would be unlikely to award penalties if events were truly unavoidable. However, treating such excess emissions as a violation

provides a necessary incentive for owners and operators to exercise due diligence to prevent upsets that are actually preventable.

- 3) Section 3.2.3 requires the Secretary to submit AELs to EPA as a SIP revision. We believe that states may not unilaterally amend provisions in an approved SIP through permit provisions. **We support this provision as a necessary check on industry efforts to allow higher emissions limits through amorphous definitions of such events.**
- 4) Section 4.1 requires an owner or operator to apply for an AEL if they cannot comply with the limits required in other rules. Section 4.2.3 requires the owner or operator to describe the alternative control strategy proposed for SS. However, nothing appears to require an owner or operator to adopt the lowest achievable emissions rate for the pollution controls proposed in applying for the AEL. While section 5.1.5 requires that “all practicable steps are taken to minimize the impact of emissions ...”, **we recommend that the rule specifically base the AEL on the lowest achievable, or best available technology, as appropriate for that area.**

45-CSR-2, 3, 5, 6, 7, 10, and 21.

- 5) These proposed amendments to rules appear to be primarily focused on upgrading the rule to meet the intent of the SSM modifications in 45-CSR-1. We support these proposed changes, subject to the need to improve 45-CSR-1 as outlined above.

45-CSR-8, Ambient Air Quality Standards; 45-CSR-16, Standards of performance for new stationary sources; and 45-CSR-34, Emissions standards for hazardous air pollutants.

- 6) We support updating the rule to incorporate the latest EPA standards.

45-CSR-44. Control of Greenhouse Gas Emissions From Existing Coal-Fired Electric Utility Generating Units

- 7) We do not oppose repeal of this particular rule, because it fell short in several important ways. In particular, the rule, like the EPA Affordable Clean Energy rule (ACE) on which it is based, fails to adequately address climate change, the very reason for the rule’s existence. The emissions reductions that would be achieved were negligible, and fail to protect the health of West Virginians, and the health of our environment.

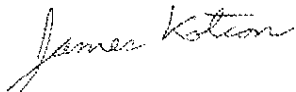
It is becoming increasingly evident that the climate crisis is much more serious than was believed even a few years ago, and requires rapid reductions in greenhouse gas emissions. Emissions of greenhouse gases are cumulative, and delays today mean we must take much more draconian steps in the near future. A simple repeal of 45-CSR-44 also fails to account for indirect health benefits from more stringent emissions reductions. Reductions in total greenhouse gas emissions would likewise reduce the emissions of harmful fine particulates, NO_x, SO₂ and other pollutants.

- 8) Rather than a simple repeal, which would leave WV with no greenhouse gas rule at all, **we recommend replacing the rule with a rule with language modeled on EPA’s proposed**

New Source Performance Standards for Greenhouse Gas Emissions..., released May 3, 2023 (available at: <https://www.federalregister.gov/documents/2023/05/23/2023-10141/new-source-performance-standards-for-greenhouse-gas-emissions-from-new-modified-and-reconstructed>). Such a rule would go a long way to achieving the greenhouse gas emissions reductions needed in this decade. It would be a proactive step that would position West Virginia as a leader in these needed reductions in greenhouse gas emissions.

Thank you for the opportunity to provide these comments.

Sincerely,



James Kotcon
Conservation Chair
WV Chapter of Sierra Club
jkotcon@gmail.com
304-594-3322 (cell)

IN RE: DIVISION OF AIR QUALITY PUBLIC HEARING

RULE 45CSR8

07/06/2023



713 LeeStreet
Charleston, WV 25301

(304) 344-8463
schedulerealtime@gmail.com

Realtimereporters.net

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF AIR QUALITY
PUBLIC HEARING

IN RE:
DIVISION OF AIR QUALITY
PROPOSED 2024 LEGISLATIVE RULES
RULE 45CSR8

* * *
Thursday, July 6, 2023
Held remotely via Google Meets
6:55 p.m.
* * *

Appearing on behalf of the WV DEP
Nicole Ernest
Laura Jennings
Sandra Adkins

Tammie Trigg, Court Reporter

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

* * *

P R O C E E D I N G S

* * *

MS. JENNINGS: Is the court reporter ready for the next hearing?

THE REPORTER: Yes, I am.

MS. JENNINGS: Thank you.

The virtual public hearing for the proposed legislative Rule 45CSR8, Ambient Air Quality Standards, will now come to order on this 6th day of July 2023.

Oral comments and testimony will be accepted until the close of this hearing and will be made part of the rulemaking record. Any question regarding revisions to the rules should be included with your comments and any such comment will be addressed as part of the response to comments in the rulemaking record.

The purpose of this public hearing is to accept comments on proposed revisions to rule 8 which was last promulgated in the 2022 session.

The rule establishes and adopts ambient air quality standards in West Virginia for carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter and sulfur dioxide equivalent to the national primary and secondary ambient air quality standards established under Section 109 of the Clean Air Act and promulgated

1 by the U.S. EPA under 40 CFR Part 50.

2 This rule also establishes and adopts ambient
3 air monitoring reference methods and equivalent methods
4 promulgated by the U.S. EPA under 40 CFR Part 53.
5 Reference methods are used to determine attainment, or
6 nonattainment, of the NAAQS.

7 Revisions to the rule include the annual
8 incorporation by reference of 40 CFR Parts 50 and 53
9 promulgated by EPA as of June 1, 2023, by updating the
10 IBR date in Section 1.6 and the adoption of standards
11 dates in Sections 3.1 and 3.2. The rule numbering and
12 text formats were revised to comport with 153CSR1.

13 The floor is now open for comments. As a
14 reminder, please keep your comments on topic and limit
15 them to five minutes. Nicole, has anyone preregistered
16 to provide comments on proposed Rule 45CSR7 (sic)? If
17 so, please unmute their line and call on them now.

18 MS. ERNEST: Thanks, Laura.

19 For those who have preregistered to speak, I
20 will call your name. Please unmute your line. I
21 apologize in advance if I pronounce anyone's name
22 incorrectly.

23 James Kotcon, please unmute your line. Please
24 clearly state your name and indicate if you're
25 representing any group or organization.

1 MR. KOTCON: My name is James Kotcon. I am
2 chair of the West Virginia Chapter of the Sierra Club.
3 I will keep the comments brief. We certainly support
4 incorporation by reference in updating these federal
5 standards. I would urge DEP to consider even more
6 stringent standards where it is needed to protect public
7 health.

8 I will also add, parenthetically, that the
9 concept of extending the comment period for two to three
10 days after the oral public hearing is a useful one, and
11 I would urge DEP to consider that in any future such
12 public hearings. Hearings such as this are important as
13 learning opportunities for all involved and would give
14 everyone a chance to clarify and extend any comments
15 that they have. Thank you.

16 MS. ERNEST: Thank you, James.

17 We are at the end of the registered
18 commenters. If you did not preregister to speak, but
19 would like to do so now, please use the "raise hand"
20 option.

21 (Short Pause)

22 MS. ERNEST: There being nothing further,
23 this public hearing for proposed rule 45CSR8 is
24 concluded. The public hearing for proposed rule 45CSR10
25 will begin momentarily.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MS. JENNINGS: Thank you, Nicole.

* * *

(Whereupon, this hearing was concluded at 6:59 p.m.)

* * *

1 THE STATE OF :
WEST VIRGINIA : SS: C E R T I F I C A T E
2 COUNTY OF OHIO :

3 I, TAMMIE TRIGG, Registered Professional
Reporter and Notary Public within and for the State of
4 West Virginia, duly commissioned and qualified, do
hereby certify that the proceedings within were by me
5 reduced to stenotype; afterwards reduced to Computer
Aided Transcription under my direction and control; that
6 the foregoing is a true and correct transcription of the
proceedings.
7

8 I do further certify that these proceedings
were taken at the time and place in the foregoing
9 caption specified, and was completed without
adjournment.
10

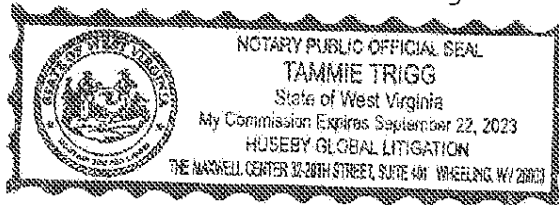
11 I do further certify that I am not a
relative, counsel or attorney of either party, or
12 otherwise interested in the event of this action.

13
14 IN WITNESS THEREOF, I have hereunto set my
hand and affixed my seal of office at Wheeling, West
Virginia, on the _____ day of _____, 2023.

Tammie Trigg

17 TAMMIE TRIGG, Registered
Professional Reporter and
18 Notary Public within and
for the State of West Virginia

20 My commission expires:
21 September 22, 2023



22
23
24
25

<p>1</p> <hr/> <p>1 3:9 1.6 3:10 109 2:25 153CSR1 3:12</p> <hr/> <p>2</p> <hr/> <p>2022 2:19 2023 2:10 3:9</p> <hr/> <p>3</p> <hr/> <p>3.1 3:11 3.2 3:11</p> <hr/> <p>4</p> <hr/> <p>40 3:1,4,8 45CSR10 4:24 45CSR7 3:16 45CSR8 2:9 4:23</p> <hr/> <p>5</p> <hr/> <p>50 3:1,8 53 3:4,8</p> <hr/> <p>6</p> <hr/> <p>6th 2:10</p> <hr/> <p>8</p> <hr/> <p>8 2:18</p> <hr/> <p>A</p> <hr/> <p>accept 2:18</p>	<p>accepted 2:11 Act 2:25 add 4:8 addressed 2:15 adoption 3:10 adopts 2:20 3:2 advance 3:21 air 2:9,20,24,25 3:3 ambient 2:9,20,24 3:2 annual 3:7 anyone's 3:21 apologize 3:21 attainment 3:5</p> <hr/> <p>B</p> <hr/> <p>begin 4:25</p> <hr/> <p>C</p> <hr/> <p>call 3:17,20 carbon 2:21 CFR 3:1,4,8 chair 4:2 chance 4:14 Chapter 4:2 clarify 4:14 Clean 2:25 close 2:12 Club 4:2 comment 2:15 4:9 commenters 4:18 comments 2:11, 14,16,18 3:13,14, 16 4:3,14</p>	<p>comport 3:12 concept 4:9 concluded 4:24 court 2:4</p> <hr/> <p>D</p> <hr/> <p>date 3:10 dates 3:11 day 2:10 days 4:10 DEP 4:5,11 determine 3:5 dioxide 2:22,23</p> <hr/> <p>E</p> <hr/> <p>end 4:17 EPA 3:1,4,9 equivalent 2:23 3:3 ERNEST 3:18 4:16,22 established 2:24 establishes 2:20 3:2 extend 4:14 extending 4:9</p> <hr/> <p>F</p> <hr/> <p>federal 4:4 floor 3:13 formats 3:12 future 4:11</p>	<p>G</p> <hr/> <p>give 4:13 group 3:25</p> <hr/> <p>H</p> <hr/> <p>hand 4:19 health 4:7 hearing 2:5,8,12, 17 4:10,23,24 hearings 4:12</p> <hr/> <p>I</p> <hr/> <p>IBR 3:10 important 4:12 include 3:7 included 2:14 incorporation 3:8 4:4 incorrectly 3:22 involved 4:13</p> <hr/> <p>J</p> <hr/> <p>James 3:23 4:1,16 JENNINGS 2:4,7 July 2:10 June 3:9</p> <hr/> <p>K</p> <hr/> <p>Kotcon 3:23 4:1</p> <hr/> <p>L</p> <hr/> <p>Laura 3:18</p>	<p>lead 2:22 learning 4:13 legislative 2:9 limit 3:14</p> <hr/> <p>M</p> <hr/> <p>made 2:12 matter 2:22 methods 3:3,5 minutes 3:15 momentarily 4:25 monitoring 3:3 monoxide 2:21</p> <hr/> <p>N</p> <hr/> <p>NAAQS 3:6 national 2:23 needed 4:6 Nicole 3:15 nitrogen 2:22 nonattainment 3:6 numbering 3:11</p> <hr/> <p>O</p> <hr/> <p>open 3:13 opportunities 4:13 option 4:20 oral 2:11 4:10 order 2:10 organization 3:25 ozone 2:22</p>
--	---	---	---	---

<p style="text-align: center;">P</p> <hr/> <p>parenthetically 4:8</p> <p>part 2:12,15 3:1,4</p> <p>particulate 2:22</p> <p>Parts 3:8</p> <p>Pause 4:21</p> <p>period 4:9</p> <p>preregister 4:18</p> <p>preregistered 3:15,19</p> <p>primary 2:23</p> <p>promulgated 2:19,25 3:4,9</p> <p>pronounce 3:21</p> <p>proposed 2:8,18 3:16 4:23,24</p> <p>protect 4:6</p> <p>provide 3:16</p> <p>public 2:8,17 4:6, 10,12,23,24</p> <p>purpose 2:17</p> <hr/> <p style="text-align: center;">Q</p> <hr/> <p>quality 2:9,21,24</p> <p>question 2:13</p> <hr/> <p style="text-align: center;">R</p> <hr/> <p>raise 4:19</p> <p>ready 2:4</p> <p>record 2:13,16</p> <p>reference 3:3,5,8 4:4</p> <p>registered 4:17</p>	<p>reminder 3:14</p> <p>reporter 2:4,6</p> <p>representing 3:25</p> <p>response 2:16</p> <p>revised 3:12</p> <p>revisions 2:13,18 3:7</p> <p>rule 2:9,18,20 3:2, 7,11,16 4:23,24</p> <p>rulemaking 2:13, 16</p> <p>rules 2:14</p> <hr/> <p style="text-align: center;">S</p> <hr/> <p>secondary 2:24</p> <p>Section 2:25 3:10</p> <p>Sections 3:11</p> <p>session 2:19</p> <p>short 4:21</p> <p>sic 3:16</p> <p>Sierra 4:2</p> <p>speak 3:19 4:18</p> <p>standards 2:9,21, 24 3:10 4:5,6</p> <p>state 3:24</p> <p>stringent 4:6</p> <p>sulfur 2:23</p> <p>support 4:3</p> <hr/> <p style="text-align: center;">T</p> <hr/> <p>testimony 2:11</p> <p>text 3:12</p> <p>topic 3:14</p>	<p style="text-align: center;">U</p> <hr/> <p>U.S. 3:1,4</p> <p>unmute 3:17,20,23</p> <p>updating 3:9 4:4</p> <p>urge 4:5,11</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>Virginia 2:21 4:2</p> <p>virtual 2:8</p> <hr/> <p style="text-align: center;">W</p> <hr/> <p>West 2:21 4:2</p>
--	--	---