

APPENDIX A

45CSR40 DOCUMENTATION

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45CSR40
FINAL RULE

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

**SERIES 40
CONTROL OF OZONE SEASON NITROGEN OXIDES EMISSIONS**

§45-40-1. General.

1.1. Scope. -- This rule establishes:

1.1.a. Ozone season NO_x emission limitation, monitoring, recordkeeping, reporting, excess emissions, and NO_x budget demonstration requirements for large industrial boilers and combustion turbines that have a maximum design heat input greater than 250 MMBTU/hr, in accordance with 40 CFR §51.121;

1.1.b. Ozone season NO_x reduction, compliance plan, monitoring, recordkeeping and reporting requirements for affected stationary internal combustion engines; and

1.1.c. Ozone season NO_x control standards, ozone season NO_x compliance plan, reporting, monitoring and recordkeeping requirements for applicable cement manufacturing kilns.

1.2. Authority. -- W.Va. Code §22-5-4.

1.3. Filing Date. -- March 31, 2023.

1.4. Effective Date. -- April 1, 2023.

1.5. Sunset Provision. -- Exempt.

§45-40-2. Definitions.

2.1. “Administrator” means the Administrator of the United States Environmental Protection Agency (U.S. EPA) or the Administrator’s duly authorized representative.

2.2. “Boiler” means an enclosed fossil or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

2.3. “Clean Air Act” or “CAA” means the Clean Air Act, 42 U.S.C. 7401, et seq., as amended.

2.4. “Clinker” means the product of a Portland cement kiln from which finished cement is manufactured by milling and grinding.

2.5. “Combustion turbine” means:

2.5.a. An enclosed device comprising a compressor, a combustor, and a turbine and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine; and

2.5.b. If the enclosed device under subdivision 2.6.a is combined cycle, any associated duct burner, heat recovery steam generator, and steam turbine.

2.6. “Continuous emission monitoring system” or “CEMS” means, except for purposes of subsections

2.15 and 6.2, the total equipment required for the determination of NO_x emission rate, expressed in pounds per million British thermal units (lb/mmBtu). For the purposes of this rule, CEMS is used for continuous compliance determinations. The sample interface, pollutant analyzer, diluent analyzer, and data recorder are the major subsystems of the CEMS. The principal type of continuous emission monitoring system is:

2.6.a. A nitrogen oxides emission rate (or NO_x-diluent) monitoring system, consisting of a NO_x pollutant concentration monitor, a diluent gas (CO₂ or O₂) monitor, and an automated data acquisition and handling system and providing a permanent, continuous record of NO_x concentration, in parts per million (ppm), diluent gas concentration, in percent CO₂ or O₂; and NO_x emission rate, in pounds per million British thermal units (lb/mmBtu);

2.7. "Excess emissions" means nitrogen oxides emitted by an applicable unit under subsection 4.1 during an ozone season that exceeds the ozone season NO_x emissions limitation for the unit set forth in section 5.

2.8. "Fossil fuel" means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

2.9. "Fossil fuel-fired" means, with regard to a unit, and solely for purposes of applying the applicability provisions in subsection 4.1:

2.9.a. The combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than 50 percent of the annual heat input on a Btu basis during any year; or

2.9.b. The combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel is projected to comprise more than 50 percent of the annual heat input on a Btu basis during any year; provided that the unit shall be "fossil fuel-fired" as of the date, during such year, on which the unit begins combusting fossil fuel.

2.10. "Large NO_x SIP call engine" means a stationary internal combustion engine identified and designated as "large" in the NO_x SIP Call Engine Inventory as emitting more than one ton of NO_x per average ozone season day in 1995.

2.11. "Long dry kiln" means a kiln 14 feet or larger in diameter, 400 feet or greater in length, which employs no preheating of the feed. The inlet feed to the kiln is dry.

2.12. "Long wet kiln" means a kiln 14 feet or larger in diameter, 400 feet or greater in length, which employs no preheating of the feed. The inlet feed to the kiln is a slurry.

2.13. "Low-NO_x burners" means combustion equipment designed to reduce flame turbulence, delay fuel/air mixing and establish fuel-rich zones for initial combustion.

2.14. "Mid-kiln firing" means the secondary firing in kilns by injecting solid fuel at an intermediate point in the kiln using a specially designed feed injection mechanism for the purpose of decreasing NO_x emissions through:

2.14.a. Burning part of the fuel at a lower temperature; and

2.14.b. Reducing conditions at the solid waste injection point that may destroy some of the NO_x formed upstream in the kiln burning zone.

2.15. "Monitoring system" means, for purposes of subsection 6.2, a continuous emissions monitoring system, an alternative monitoring system, or an excepted monitoring system under 40 CFR part 75 as defined in 40 CFR §72.2.

2.16. “Nitrogen oxides” or “NO_x” means all oxides of nitrogen except nitrous oxide (N₂O), reported on an equivalent molecular weight basis as nitrogen dioxide (NO₂).

2.17. “NO_x SIP Call Engine Inventory” means the inventory of internal combustion engines compiled by U.S. EPA as part of the NO_x SIP Call Rule, including the technical amendments, announced in the March 2, 2000 Federal Register, page 11222, and the adjustment of the 2007 Budget NO_x Control Efficiency to 82 percent for large gas-fired engines, announced in the April 21, 2004 Federal Register notice, page 21604 for the Phase II NO_x SIP Call Rule.

2.18. “Ozone season” means the period beginning May 1 of a calendar year, and ending on September 30 of the same year, inclusive.

2.19. “Performance Specification 2” or “PS 2” means the Specifications and Test Procedures for SO₂ and NO_x Continuous Emission Monitoring Systems in Stationary Sources provided in Appendix B to 40 CFR part 60. For purposes of subsections 6.3 and 6.5, these procedures are used for measuring CEMS relative accuracy and calibration drift and include CEMS installation and measurement location specifications, equipment specifications, performance specifications, and data reduction.

2.20. “Performance Specification 16” or “PS 16” means the Specifications and Test Procedures for Predictive Emission Monitoring Systems (PEMS) in Stationary Sources provided in Appendix B to 40 CFR part 60. For purposes of subsection 6.4, these procedures are used to determine whether the PEMS is acceptable for use in demonstrating compliance with the NO_x emission limit and to certify the PEMS initially. They are also used periodically thereafter to ensure the PEMS is operating properly. These specifications apply to PEMS that are installed on or after April 24, 2009.

2.21. “Predictive Emission Monitoring System” or “PEMS” means all of the equipment required to predict an emission concentration or emission rate. The system may consist of any of the following major subsystems: sensors and sensor interfaces, emission model, algorithm, or equation that uses process data to generate an output that is proportional to the emission concentration or emission rate, diluent emission model, data recorder, and sensor evaluation system. Systems that use fewer than three (3) variables do not qualify as PEMS unless the system has been specifically approved by the Administrator for use as a PEMS. A PEMS may predict emissions data that are corrected for diluent if the relative accuracy and relevant QA tests are passed in the emission units corrected for diluent. Parametric monitoring systems that serve as indicators of compliance and have parametric limits but do not predict emissions to comply with an emissions limit are not included in this definition.

2.22. “Portland cement” means a hydraulic cement produced by pulverizing clinker consisting essentially of hydraulic calcium silicates, usually containing one or more of the forms of calcium sulfate as an interground addition.

2.23. “Portland cement kiln” means a system, including any solid, gaseous or liquid fuel combustion equipment, used to calcine and fuse raw materials, including limestone and clay, to produce Portland cement clinker.

2.24. “Precalciner kiln” means a kiln where the feed to the kiln system is preheated in cyclone chambers and utilizes a second burner to calcine material in a separate vessel attached to the preheater prior to the final fusion in a kiln which forms clinker.

2.25. “Preheater kiln” means a kiln where the feed to the kiln system is preheated in cyclone chambers prior to the final fusion in a kiln which forms clinker.

2.26. “Secretary” means the Secretary of the Department of Environmental Protection or such other person to whom the Secretary has delegated authority or duties pursuant to W.Va. Code §§22-1-6 or 22-1-

8.

2.27. “Source” means all buildings, structures, or installations located in one or more contiguous or adjacent properties under common control of the same person or persons.

2.28. “Stationary internal combustion engine” or “engine” means any internal combustion engine of the reciprocating type that is either attached to a foundation at a facility or is designed to be capable of being carried or moved from one location to another and remains at a single site at a building, structure, facility, or installation for more than 12 consecutive months. Any engine (or engines) that replaces an engine at a site that is intended to perform the same or similar function as the engine replaced is included in calculating the consecutive time period.

2.29. “Ton” means 2,000 pounds.

2.30. “Unit” means a stationary fossil fuel-fired boiler, combustion turbine, or combined cycle system.

2.31. Other words and phrases used in this rule, unless otherwise indicated, will have the meaning ascribed to them in W.Va. Code §22-5-1 et seq. and 40 CFR §72.2.

§45-40-3. Measurements, abbreviations and acronyms.

3.1. Measurements, abbreviations and acronyms used in this rule are defined as follows:

- 3.1.a. Btu -- British thermal unit.
- 3.1.b. CEMS -- Continuous Emissions Monitoring System.
- 3.1.c. CO₂ -- carbon dioxide.
- 3.1.d. CSAPR -- Cross-State Air Pollution Rule.
- 3.1.e. g/bhp-hr -- grams per brake horsepower hour.
- 3.1.f. Hr -- hour.
- 3.1.g. MmBtu -- million Btu.
- 3.1.h. NO_x -- nitrogen oxides.
- 3.1.i. O₂ -- oxygen.
- 3.1.j. PEMS -- Predictive Emission Monitoring System.
- 3.1.k. SO₂ -- sulfur dioxide.
- 3.1.l. Tph -- tons per hour.
- 3.1.m. Yr -- year.

§45-40-4. Applicability.

4.1. The owner or operator of a unit that has a maximum design heat input greater than 250 MMBtu/hr, except for any unit subject to a seasonal NO_x trading program established under 40 CFR part 97 in accordance with a federal implementation plan set forth in 40 CFR § 52.38(b) or subject to a seasonal NO_x

trading program established under a SIP revision approved by the U.S. EPA as meeting the requirements of 40 CFR § 52.38(b), shall comply with the ozone season NO_x emission limitation, and monitoring, recordkeeping and reporting requirements for ozone season emissions of NO_x set forth in sections 5 and 6 below.

4.2. Effective May 1, 2009, the owner or operator of a large NO_x SIP Call engine shall comply with the ozone season NO_x reduction, compliance plan, monitoring, recordkeeping and reporting requirements set forth in section 9 below.

4.3. Effective May 1, 2009, the owner or operator of a kiln that meets the following applicability requirements shall comply with the ozone season NO_x control standards, ozone season NO_x compliance plan, reporting, monitoring and recordkeeping requirements set forth in section 10 below:

4.3.a. Long dry kilns \geq 12 TPH process rate;

4.3.b. Long wet kilns \geq 10 TPH process rate;

4.3.c. Preheater kilns \geq 16 TPH process rate; and

4.3.d. Precalciner and preheater/precalciner kilns \geq 22 TPH process rate.

§45-40-5. Ozone season NO_x emission limitation.

5.1. Ozone season NO_x limitation. -- Beginning May 1, 2016, the owner or operator of a unit that meets the applicability requirements set forth in subsection 4.1 shall limit emissions of NO_x during an ozone season pursuant to a NO_x emission rate for each unit contained in a permit issued under 45CSR13, 45CSR14, 45CSR19 or via consent order issued by the Secretary in accordance with W.Va. Code §22-5-4(a)(5). Such ozone season NO_x limitation may also include a limitation on operating time for a unit during the ozone season.

§45-40-6. Monitoring, recordkeeping and reporting requirements.

6.1. The owner or operator of an applicable unit under subsection 4.1 shall comply with the provisions of 40 CFR part 75, subpart H (including use of any of the emissions monitoring methodologies which the unit qualifies to use under 40 CFR part 75) or shall install and operate a certified continuous emission monitoring system (CEMS) or a certified predictive emission monitoring system (PEMS) as necessary to attribute ozone season mass emissions of NO_x to each unit in accordance with subsection 6.2, 6.3, 6.4 or 6.5 below. Nitrogen oxides mass emissions measurements recorded and reported in accordance with subsection 6.2, 6.3, 6.4 or 6.5 shall be used to determine a unit's compliance with the ozone season NO_x emission limitation set forth in section 5.

6.2. An owner or operator that elects to demonstrate compliance in accordance with 40 CFR part 75, subpart H, shall meet the following requirements:

6.2.a. Install, calibrate, certify, maintain, monitor, and operate all required monitoring systems in accordance with 40 CFR part 75, subpart H;

6.2.b. Maintain records in accordance with 40 CFR part 75, subpart H ; and

6.2.c. Submit reports in accordance with 40 CFR part 75, subpart H.

6.3. An owner or operator that elects to demonstrate compliance using a CEMS in accordance with 40 CFR part 60, subpart Db and 45CSR16 shall meet the following requirements:

6.3.a. Install and certify the CEMS in accordance with Performance Specification 2 in Appendix B to 40 CFR part 60;

6.3.b. Operate and maintain the CEMS in accordance with 40 CFR §60.46b on a continuous basis;

6.3.c. Install, calibrate, maintain and operate the CEMS in accordance with the continuous monitoring requirements of:

6.3.c.1. 40 CFR §§60.48b and 60.13; or

6.3.c.2. 40 CFR §§60.47b(e) and 60.13;

6.3.d. For each month of the ozone season:

6.3.d.1. Determine total monthly heat input (in mmBtu) using fuel flowmeters and measurements or records of fuel gross calorific value, or in instances where fuel flow is not metered determine total monthly heat input (in mmBtu) from other measurements and records; and

6.3.d.2. Calculate total monthly NO_x mass emissions (in tons) by multiplying the total monthly heat input by the 30-day rolling average NO_x emission rate (in lb/mmBtu) determined under subdivisions 6.3.b and 6.3.c for the last day of the month on which the unit operated and divide by 2000;

6.3.e. Determine the total NO_x mass emissions for the ozone season (in tons) by summing the amounts of total monthly NO_x mass emissions calculated under subdivision 6.3.d for each month of the ozone season; and

6.3.f. Comply with the following reporting and recordkeeping requirements:

6.3.f.1. Maintain records in accordance with 40 CFR §60.49b and all additional records necessary to support the heat input data, 30-day rolling average NO_x emission rate data, and NO_x mass emissions computations described in subdivisions 6.3.d and 6.3.e; and

6.3.f.2. Submit to the Secretary reports in accordance with 40 CFR §60.49b and include the total monthly heat input data, 30-day rolling average NO_x emission rate data, and monthly and ozone season NO_x mass emissions computations described in subdivisions 6.3.d and 6.3.e.

6.4. An owner or operator not otherwise required to use a CEMS to demonstrate compliance with 40 CFR part 60 may elect to demonstrate compliance using a PEMS and shall meet the following requirements:

6.4.a. Install and certify the PEMS in accordance with Performance Specification 16 in Appendix B to 40 CFR part 60 and the Quality Assurance Procedures for compliance PEMS in Appendix F to 40 CFR part 60;

6.4.b. Submit to the Secretary for approval a plan that identifies the operating conditions to be monitored and the records to be maintained in accordance with 40 CFR §60.49b(c). The request for plan approval shall be contained in the permit application or consent order required under subsection 6.6;

6.4.c. Operate and maintain the compliance PEMS on a continuous basis in accordance with 40 CFR §60.46b and the compliance PEMS requirements provided in Performance Specification 16 in Appendix B to 40 CFR part 60;

6.4.d. Comply with the continuous monitoring requirements of 40 CFR §§60.48b and 60.13;

6.4.e. For each month of the ozone season:

6.4.e.1. Determine total monthly heat input (in mmBtu) using fuel flowmeters and measurements or records of fuel gross calorific value, or in instances where fuel flow is not metered determine total monthly heat input (in mmBtu) from other measurements and records; and

6.4.e.2. Calculate total monthly NO_x mass emissions (in tons) by multiplying the total monthly heat input by the 30-day rolling average NO_x emission rate (in lb/mmBtu) determined under subdivisions 6.4.c and 6.4.d for the last day of the month on which the unit operated and divide by 2000;

6.4.f. Determine the total NO_x mass emissions for the ozone season (in tons) by summing the amounts of total monthly NO_x mass emissions calculated under subdivision 6.4.e for each month of the ozone season; and

6.4.g. Comply with the following reporting and recordkeeping requirements:

6.4.g.1. Maintain records in accordance with 40 CFR §60.49b and all additional records necessary to support the heat input data, 30-day rolling average NO_x emission rate data, and NO_x mass emissions computations described in subdivisions 6.4.e and 6.4.f; and

6.4.g.2. Submit to the Secretary reports in accordance with 40 CFR §60.49b and include the total monthly heat input data, 30-day rolling average NO_x emission rate data, and monthly and ozone season NO_x mass emissions computations described in subdivisions 6.4.e and 6.4.f.

6.5. An owner or operator of a combustion turbine unit that elects to demonstrate compliance using a CEMS shall meet the following requirements:

6.5.a. Install and certify the CEMS in accordance with Performance Specification 2 in Appendix B to 40 CFR part 60 and 45CSR16;

6.5.b. Conduct the performance tests in accordance with 40 CFR §60.4400;

6.5.c. Operate and maintain the CEMS in accordance with 40 CFR §60.4345 on a continuous basis;

6.5.d. Collect all CEMS data in accordance with 40 CFR §60.4350;

6.5.e. For each month of the ozone season:

6.5.e.1. Determine total monthly heat input (in mmBtu) using fuel flowmeters and measurements or records of fuel gross calorific value, or in instances where fuel flow is not metered determine total monthly heat input (in mmBtu) from other measurements and records; and

6.5.e.2. Calculate total monthly NO_x mass emissions (in tons) by multiplying the total monthly heat input by the 30-day rolling average NO_x emission rate (in lb/mmBtu) determined under subdivisions 6.5.c and 6.5.d for the last day of the month on which the unit operated and divide by 2000;

6.5.f. Determine the total NO_x mass emissions for the ozone season (in tons) by summing the amounts of total monthly NO_x mass emissions calculated under subdivision 6.5.e for each month of the ozone season; and

6.5.g. Comply with the following reporting and recordkeeping requirements:

6.5.g.1. Maintain records in accordance with 40 CFR §60.49b and all additional records necessary to support the heat input data, 30-day rolling average NO_x emission rate data, and NO_x mass

emissions computations described in subdivisions 6.5.e and 6.5.f; and

6.4.g.2. Submit to the Secretary reports in accordance with 40 CFR §60.49b and include the total monthly heat input data, 30-day rolling average NO_x emission rate data, and monthly and ozone season NO_x mass emissions computations described in subdivisions 6.5.e and 6.5.f.

6.6. An owner or operator that elects an alternative monitoring scenario that is not currently contained in a permit issued pursuant to 45CSR13, 45CSR14 or 45CSR19 or via a consent order shall:

6.6.a. Submit a request for the alternative monitoring scenario in a permit application in accordance with 45CSR13, 45CSR14 or 45CSR19. For compliance options provided in 6.3, 6.4 or 6.5, the permit application should identify how NO_x emissions (in tons) will be determined using the CEMS or PEMS data; and.

6.6.b. Obtain approval from the Secretary via a permit issued under 45CSR13, 45CSR14 or 45CSR19 or via a consent order, effective prior to the start of the ozone season.

6.7. An owner or operator electing to demonstrate compliance with 40 CFR part 75, subpart H shall not use any alternative monitoring system, alternative reference method, or any other alternative for the requirements under 40 CFR part 75, subpart H prior to obtaining written approval by the Administrator in accordance with 40 CFR §75.70(h).

6.8. An owner or operator required to demonstrate compliance with a NO_x emissions limit under 40 CFR part 60, subpart Db shall not use an alternative monitoring system, reference method, or other CEMS requirements alternative under 40 CFR part 60, subpart Db prior to obtaining written approval by the Administrator.

6.9. The owner or operator of an applicable unit under subsection 4.1 may demonstrate compliance with the NO_x ozone season emission limitation set forth in section 5 in accordance with an alternative monitoring system under 40 CFR part 60, subpart Db without obtaining approval of the Secretary, provided the owner or operator obtained written approval from the Administrator prior to the effective date of this rule.

§45-40-7. Violation.

7.1. The owner or operator of an applicable unit under subsection 4.1 shall be subject to enforcement pursuant to W.Va. Code §22-5-1 et seq. or the CAA for excess emissions of NO_x during an ozone season if the unit emitted nitrogen oxides in excess of its ozone season NO_x emission limitation set forth in section 5.

§45-40-8. Ozone season NO_x budget demonstration.

8.1. Ozone season NO_x budget. -- The ozone season NO_x budget for all units that meet the applicability requirements set forth in subsection 4.1 is 2,184 tons.

8.2. Ozone season NO_x budget demonstration. -- Through the imposition of ozone season NO_x limitations under section 5, and assumption of maximum operating capacity or use of a limitation on operating time for a unit during the ozone season, the Secretary shall demonstrate to the Administrator that the ozone season NO_x emissions from all applicable units under subsection 4.1 meets the ozone season NO_x budget for these units set forth in subsection 8.1.

8.3. New units. -- The Secretary shall revise the ozone season NO_x budget demonstration under subsection 8.2 to accommodate the ozone season NO_x emissions of any new unit that meets the applicability requirements set forth in subsection 4.1. The ozone season NO_x emissions from any such new unit shall

not cause the ozone season NO_x budget set forth in subsection 8.1 to be exceeded.

§45-40-9. Ozone season NO_x reduction requirements for stationary internal combustion engines.

9.1. Ozone season NO_x reduction. -- Effective May 1, 2009, the following owners or operators must reduce ozone season NO_x emissions by an amount equal to or greater than the applicable ozone season NO_x reduction listed in the table below. The applicable ozone season NO_x reduction is binding on the listed owners or operators, their successors and assigns:

Company	Ozone Season NO_x Reduction
Dominion	668 tons
Columbia Gas Transmission	235 tons
Total	903 tons

9.2. Compliance plan. -- Effective May 1, 2009, an owner or operator of a large stationary internal combustion engine under subsection 4.2 must not operate such engine in the period May 1 through September 30 of 2009 and any subsequent year unless the owner or operator demonstrates the applicable ozone season NO_x reduction under subsection 9.1 through the requirements of an approved compliance plan. The compliance plan shall meet the following provisions:

9.2.a. Reserved;

9.2.b. Reserved;

9.2.c. The compliance plan must demonstrate quantifiable and enforceable NO_x emission reductions equal to or greater than the applicable ozone season NO_x reduction set forth in subsection 9.1, taking into account any creditable reduction in NO_x emissions under subdivisions 9.2.e, 9.2.f, 9.2.g, 9.2.h or 9.2.i;

9.2.d. The compliance plan may include and affect some or all stationary internal combustion engines or other significant NO_x emitting equipment at an individual facility, at several facilities, or at all facilities in West Virginia that are controlled by the same owner or operator;

9.2.e. The compliance plan may include credit for reductions in NO_x emissions due to the installation and operation of NO_x control equipment on large stationary internal combustion engines under subsection 9.1. The owner or operator will demonstrate to the satisfaction of the Secretary any creditable reductions in NO_x emissions from the installation and operation of such NO_x control equipment. The credit for reductions in NO_x emissions must be quantified based on the difference between uncontrolled and controlled NO_x emission rates, and ozone season operating hours;

9.2.f. The compliance plan may include credit for reductions in NO_x emissions due to the installation and operation of NO_x control equipment on uncontrolled stationary internal combustion engines not under subsection 4.2. The owner or operator will demonstrate to the satisfaction of the Secretary any creditable reductions in NO_x emissions from the installation and operation of such NO_x control equipment. Creditable reductions must be limited to reductions achieved after 1995 and from controls that were not part of the NO_x SIP Call engine inventory. The credit for reductions in NO_x emissions must be quantified based on the difference between uncontrolled and controlled NO_x emission rates, and ozone season operating hours;

9.2.g. The compliance plan may include credit for reductions in NO_x emissions due to replacement of any stationary internal combustion engines or other significant NO_x emitting equipment. The owner or operator will demonstrate to the satisfaction of the Secretary that the historic ozone season

load capacity of any stationary internal combustion engine or other significant NO_x emitting equipment no longer in operation has been or would be replaced by one or more new stationary internal combustion engines, electric motors or turbines during each ozone season. The credit for reductions in NO_x emissions must be quantified based on the replaced engine's or other significant NO_x emitting equipment's ozone season NO_x emission rate and ozone season operating hours, and the projected emission rate and ozone season operating hours of any new replacement stationary internal combustion engines, electric motors or turbines;

9.2.h. The compliance plan may include credit for reductions in NO_x emissions due to reductions from shifting historic load capacity from an uncontrolled engine to a controlled engine, electric motor or turbine. The owner or operator will demonstrate to the satisfaction of the Secretary that a quantifiable net reduction in NO_x emissions has occurred or will occur due to a direct shift of ozone season load capacity from an uncontrolled engine to a controlled engine, electric motor or turbine. The credit for reductions in NO_x emissions must be quantified based on the uncontrolled engine's historic ozone season load capacity, NO_x emission rate (in g/bhp-hr), ozone season operating hours (in hr/ozone season), and the shifted ozone season load capacity, NO_x emission rate (in g/bhp-hr) and ozone season operating hours (in hr/ozone season) of the controlled stationary internal combustion engine, electric motor or turbine;

9.2.i. The compliance plan may include credit for reductions in NO_x emissions due to the installation and operation of NO_x controls on significant NO_x emitting equipment other than stationary internal combustion engines. The owner or operator will demonstrate to the satisfaction of the Secretary any creditable reductions in NO_x emissions from such NO_x emitting equipment. Creditable reductions must be limited to reductions achieved after 1995 and from controls that were not part of the NO_x SIP Call inventory. The credit for reductions in NO_x emissions must be quantified based on the difference between NO_x emission rates prior to installation of controls and controlled NO_x emission rates, and ozone season operating hours;

9.2.j. The compliance plan must include the following:

9.2.j.1. A list of affected engines or affected NO_x emitting equipment subject to the plan, including the manufacturer, model number, facility location and facility identification number;

9.2.j.2. The projected ozone season hours of operation for each affected engine or affected NO_x emitting equipment and supporting documentation;

9.2.j.3. A description of the NO_x emission controls installed, or to be installed, on each affected engine or affected NO_x emitting equipment, date or proposed date of installation, and documentation to support the controlled NO_x emission rates;

9.2.j.4. The uncontrolled and controlled NO_x emission rates in lb/hr and tons per ozone season for each affected engine or affected NO_x emitting equipment, as applicable;

9.2.j.5. A numerical demonstration that the sum of creditable NO_x emission reductions (in tons) obtained from all affected engines or affected NO_x emitting equipment included under a compliance plan will be equivalent to or greater than the owner or operator's applicable ozone season NO_x reduction under subsection 9.1, taking into account any creditable reductions in NO_x emissions under subdivisions 9.2.e, 9.2.f, 9.2.g, 9.2.h or 9.2.i; and

9.2.j.6. Performance test protocol and provisions for periodic monitoring, reporting and recordkeeping for each affected engine or affected NO_x emitting equipment.

9.2.k. Any creditable reductions in NO_x emissions under subdivisions 9.2.e, 9.2.f, 9.2.g, 9.2.h or 9.2.i must be quantifiable and enforceable through limitations included in a federally enforceable permit or compliance order; and

9.2.1. Any owner or operator with an approved compliance plan under subsection 9.2 may amend the plan with the written approval of the Secretary. Any NO_x emission rate or limitation included in such an amendment must be reflected in a federally enforceable permit or compliance order. The Secretary will either approve by order or disapprove in writing the amended compliance plan within 90 days of submission, and notify the Administrator of the compliance plan amendment approval upon issuance of order.

9.3. Monitoring requirements. -- Any owner or operator of an affected engine or affected NO_x emitting equipment subject to a compliance plan under subsection 9.2 must comply with the following monitoring requirements for each affected engine or affected NO_x emitting equipment:

9.3.a. The owner or operator must complete an initial performance test consistent with the requirements of 40 CFR part 60, Appendix A and 45CSR16, following installation of NO_x emission controls required to achieve the NO_x emission rate limit specified in subdivision 9.2.k; and

9.3.b. For the ozone season beginning in 2009, and each ozone season thereafter, the owner or operator will perform periodic monitoring sufficient to yield reliable data which demonstrate compliance with the limitations specified in subdivision 9.2.k. Such periodic monitoring must include:

9.3.b.1. A continuous emission monitoring system that complies with 40 CFR part 75 or 40 CFR part 60 and 45CSR16 and the quality assurance procedures specified in 40 CFR part 60, Appendix F and 45CSR16; or

9.3.b.2. Performance tests consistent with the requirements of 40 CFR part 60, Appendix A and 45CSR16, or portable monitors using ASTM D6522-00; and

9.3.b.2.A. A parametric monitoring program that specifies operating parameters, and their ranges, that will provide reasonable assurance that each affected engine or affected NO_x emitting equipment's emissions are consistent with the requirements of a compliance plan under subsection 9.2. Any such parametric monitoring program must be approved by the Secretary; or

9.3.b.2.B. A predictive emissions measurement system that relies on automated data collection from instruments. Any such predictive emissions measurement system must be approved by the Secretary.

9.4. Recordkeeping requirements. -- Any owner or operator of an affected engine or affected NO_x emitting equipment subject to a compliance plan under subsection 9.2 must comply with the following recordkeeping requirements:

9.4.a. Maintain all records necessary to demonstrate compliance with the requirements of the compliance plan and subsection 9.4 for a period of five calendar years at the facility where an affected engine or affected NO_x emitting equipment is located. Such records will be made available to the Secretary or Administrator upon request; and

9.4.b. For each affected engine or affected NO_x emitting equipment subject to a compliance plan under subsection 9.2, the owner or operator will maintain records of:

9.4.b.1. Identification and location of each affected engine or affected NO_x emitting equipment;

9.4.b.2. Calendar date of record;

9.4.b.3. The number of hours the affected engine or affected NO_x emitting equipment is

operated during each ozone season compared to projected operating hours;

9.4.b.4. Type and quantity of fuel combusted; and

9.4.b.5. The results of all compliance tests.

9.5. Reporting requirements. -- Any owner or operator of an affected engine or affected NO_x emitting equipment subject to a compliance plan under subsection 9.2 must:

9.5.a. Notify the Secretary of any performance test under paragraph 9.3.b.2 at least 15 days in advance of such test;

9.5.b. Submit results of all performance tests to the Secretary within 30 days of completion of such tests; and

9.5.c. Submit a report which documents the total ozone season NO_x emissions and certifies compliance with the compliance plan for each affected engine or affected NO_x emitting equipment to the Secretary by October 31 of each year, beginning in 2009. The report must demonstrate and certify compliance with the applicable ozone season NO_x reduction set forth in subsection 9.1.

§45-40-10. Ozone season NO_x reduction requirements for emissions of NO_x from cement manufacturing kilns.

10.1. Standard requirements. -- Effective May 1, 2009, an owner or operator of any Portland cement kiln subject to this section must not operate the kiln during May 1 through September 30 unless the kiln has installed and operates during May 1 to September 30 with low-NO_x burners, mid-kiln firing or alternative control techniques, subject to approval by the Administrator, that achieve at least the same emissions decreases as low-NO_x burners or mid-kiln firing.

10.2. NO_x compliance plan. -- Any owner or operator of a source subject to the standard requirements of subsection 10.1 may elect to use NO_x reductions from any non-affected kiln at a source with a Portland cement kiln under subsection 4.3. If the owner or operator so elects, he or she must submit for approval to the Administrator by May 1, 2009, a NO_x compliance plan which demonstrates the method(s) by which the operator will achieve NO_x reductions from non-affected kilns which achieve at least the same emissions decreases set forth in the standard requirements of subsection 10.1.

10.3. Reporting requirements. -- Any owner or operator subject to the standard requirements of subsection 10.1 must comply with the following reporting requirements:

10.3.a. By May 1, 2009, submit to the Secretary and Administrator the identification number and type of each kiln subject to this section, the name and address of the plant where the kiln is located and the name and telephone number of the person responsible for demonstrating compliance with this section; and

10.3.b. Submit a report documenting for that kiln the total NO_x emissions from May 1 through September 30 of each year to the Secretary and Administrator by October 31 of each year, beginning in 2009.

10.4. Monitoring requirements.

10.4.a. Any owner or operator of a kiln subject to this section must complete an initial performance test and subsequent annual testing consistent with the requirements of 40 CFR part 60, Appendix A, Method 7, 7A, 7C, 7D or 7E; and 45CSR16; and

10.4.b. The operator may use the results of continuous emission monitoring system (CEMS) to

replace the annual testing requirements set forth in subdivision 10.4.a. Such equipment must be installed and operated consistent with 40 CFR part 75.

10.5. Recordkeeping requirements. -- Any owner or operator of a kiln subject to this section must produce and maintain records which include, but are not limited to:

10.5.a. The emissions, in pounds of NO_x per ton of clinker produced from each affected Portland cement kiln;

10.5.b. The type of control used for each affected Portland cement kiln;

10.5.c. The date, time and duration of any startup, shutdown or malfunction in the operation of any of the cement kilns or the emissions monitoring equipment;

10.5.d. The results of any performance testing;

10.5.e. Daily cement kiln production records; and

10.5.f. All records required to be produced or maintained will be retained on site for a minimum of 5 years and be made available to the Secretary or Administrator upon request.

§45-40-11. Inconsistency between rules.

11.1. In the event of any inconsistency between this rule and any other rule of the Division of Air Quality, the inconsistency will be resolved by the determination of the Secretary and the determination will be based upon the application of the more stringent provision, term, condition, method or rule.

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HOUSE BILL 2640

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WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 2640

BY DELEGATE FOSTER

[Passed March 6, 2023; in effect from passage.]

1 AN ACT to amend and reenact §64-3-1 of the Code of West Virginia, 1931, as amended, all
2 relating generally to authorizing certain agencies of the Department of Environmental
3 Protection to promulgate legislative rules; authorizing the rules as filed and as modified by
4 the Legislative Rule-Making Review Committee and as amended by the Legislature;
5 authorizing the Department of Environmental Protection to promulgate a legislative rule
6 relating to standards of performance for new stationary sources; authorizing the
7 Department of Environmental Protection to promulgate a legislative rule relating to
8 requirements for operating permits; authorizing the Department of Environmental
9 Protection to promulgate a legislative rule relating to emission standards for hazardous air
10 pollutants; authorizing the Department of Environmental Protection to promulgate a
11 legislative rule relating to control of ozone season nitrogen oxides emissions; authorizing
12 the Department of Environmental Protection to promulgate a legislative rule relating to
13 quarrying and reclamation; authorizing the Department of Environmental Protection to
14 promulgate a legislative rule relating to the Recycling Assistance Grant Program;
15 authorizing the Department of Environmental Protection to promulgate a legislative rule
16 relating to the Reclamation of Abandoned and Dilapidated Properties Grant Program; and
17 authorizing the Secretary's Office of the Department of Environmental Protection to
18 promulgate a legislative rule relating to reclamation of solar and wind electricity generation
19 facilities.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 3. AUTHORIZATION FOR DEPARTMENT OF ENVIRONMENTAL
PROTECTION. TO PROMULGATE LEGISLATIVE RULES.**

§64-3-1. Department of Environmental Protection.

1 (a) The legislative rule filed in the State Register on July 21, 2022, authorized under the
2 authority of §22-5-4 of this code, relating to the Department of Environmental Protection
3 (standards of performance for new stationary sources, 45 CSR 16), is authorized.

4 (b) The legislative rule filed in the State Register on July 21, 2022, authorized under the
5 authority of §22-5-4 of this code, modified by the Department of Environmental Protection to meet
6 the objections of the Legislative Rule-Making Review Committee and refiled in the State Register
7 on December 20, 2022, relating to the Department of Environmental Protection (requirements for
8 operating permits, 45 CSR 30), is authorized with the amendment set forth below:

9 On page 39, subdivision 8.1.a.1, by striking the number “\$15,000” and inserting in lieu
10 thereof the number “\$5,000”.

11 (c) The legislative rule filed in the State Register on July 21, 2022, authorized under the
12 authority of §22-5-4 of this code, relating to the Department of Environmental Protection
13 (emission standards for hazardous air pollutants, 45 CSR 34), is authorized.

14 (d) The legislative rule filed in the State Register on July 21, 2022, authorized under the
15 authority of §22-5-4 of this code, modified by the Department of Environmental Protection to meet
16 the objections of the Legislative Rule-Making Review Committee and refiled in the State Register
17 on September 16, 2022, relating to the Department of Environmental Protection (control of ozone
18 season nitrogen oxides emissions, 45 CSR 40), is authorized.

19 (e) The legislative rule filed in the State Register on May 26, 2022, authorized under the
20 authority of §22-4-4 of this code, modified by the Department of Environmental Protection to meet
21 the objections of the Legislative Rule-Making Review Committee and refiled in the State Register
22 on October 6, 2022, relating to the Department of Environmental Protection (rules for quarrying
23 and reclamation, 38 CSR 03), is authorized.

24 (f) The legislative rule filed in the State Register on July 29, 2022, authorized under the
25 authority of §22-15A-19 of this code, relating to the Department of Environmental Protection
26 (recycling assistance grant program, 33 CSR 10), is authorized.

27 (g) The legislative rule filed in the State Register on July 29, 2022, authorized under the
28 authority of §22-15A-30 of this code, modified by the Department of Environmental Protection to
29 meet the objections of the Legislative Rule-Making Review Committee and refiled in the State

Register on October 14, 2022, relating to the Department of Environmental Protection (Reclamation of Abandoned and Dilapidated Properties Grant Program, 33 CSR 13), is authorized with the following amendment:

On page 2, after subdivision 4.1.b., by inserting a new subdivision 4.1.c. to read as follows:

“4.1.c. This project shall give priority to structures near highly visible traffic areas, tourism corridors, and/or common open space.”

§64-3-2. Department of Environmental Protection – Secretary’s Office.

The legislative rule filed in the State Register on July 29, 2022, authorized under the authority of §22-32-7 of this code, relating to the Department of Environmental Protection – Secretary’s Office (reclamation of solar and wind electricity generating facilities, 60 CSR 11), is authorized with the following amendments:

On page 5, subparagraph 4.1.d.iii after the word, ‘slabs” by inserting the words “to a minimum depth of 36 inches below the surface”;

On page 5, subsection 4.4 after the word “receipt” by adding the following:

“The department shall only deny an alternative decommissioning agreement if they determine that it will not result in the restoration of the property to a condition in which it can be used towards the same or a similar use as its use prior to the onset of the alternative decommissioning agreement.”;

And,

On page 7, by striking out subdivision 6.2.a and inserting in lieu thereof subdivision 6.2.a to read as follows:

“6.2.a. Estimated costs of decommissioning and salvage value as submitted by the owner in the decommissioning plan and in accordance with these rules with such costs estimated by the department using current machinery production handbooks and publications or other documented or substantiated cost estimates acceptable to the department.”

The Clerk of the House of Delegates and the Clerk of the Senate hereby
certify that the foregoing bill is correctly enrolled.

.....
Clerk of the House of Delegates

.....
Clerk of the Senate

Originated in the House of Delegates.

In effect from passage.

.....
Speaker of the House of Delegates

.....
President of the Senate

The within is this the.....
Day of, 2023.

.....
Governor

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45CSR40
NOTICE OF FINAL FILING

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WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

eFILED

3/31/2023 11:15:58 AM

Office of West Virginia
Secretary Of State

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE**

AGENCY: Air Quality

TITLE-SERIES: 45-40

RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: Control of Ozone Season Nitrogen Oxides
Emissions

CITE STATUTORY AUTHORITY: W. Va. Code § 22-5-4

The above rule has been authorized by the West Virginia Legislature.

Authorization is cited in (house or senate bill number) HB2640

Section 64-3-1 (d) Passed On 3/6/2023 12:00:00 AM

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

April 1, 2023

This rule shall terminate and have no further force or effect from the following date:

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Jason E Wandling -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 45
LEGISLATIVE RULE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
AIR QUALITY

SERIES 40
CONTROL OF OZONE SEASON NITROGEN OXIDES EMISSIONS

§45-40-1. General.

1.1. Scope. -- This rule establishes:

1.1.a. Ozone season NO_x emission limitation, monitoring, recordkeeping, reporting, excess emissions, and NO_x budget demonstration requirements for large industrial boilers and combustion turbines that have a maximum design heat input greater than 250 MMBTU/hr, in accordance with 40 CFR §51.121;

1.1.b. Ozone season NO_x reduction, compliance plan, monitoring, recordkeeping and reporting requirements for affected stationary internal combustion engines; and

1.1.c. Ozone season NO_x control standards, ozone season NO_x compliance plan, reporting, monitoring and recordkeeping requirements for applicable cement manufacturing kilns.

1.2. Authority. -- W.Va. Code §22-5-4.

1.3. Filing Date. -- March 31, 2023.

1.4. Effective Date. -- April 1, 2023.

1.5. Sunset Provision. -- Exempt.

§45-40-2. Definitions.

2.1. “Administrator” means the Administrator of the United States Environmental Protection Agency (U.S. EPA) or the Administrator’s duly authorized representative.

2.2. “Boiler” means an enclosed fossil or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

2.3. “Clean Air Act” or “CAA” means the Clean Air Act, 42 U.S.C. 7401, et seq., as amended.

2.4. “Clinker” means the product of a Portland cement kiln from which finished cement is manufactured by milling and grinding.

2.5. “Combustion turbine” means:

2.5.a. An enclosed device comprising a compressor, a combustor, and a turbine and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine; and

2.5.b. If the enclosed device under subdivision 2.6.a is combined cycle, any associated duct burner, heat recovery steam generator, and steam turbine.

2.6. “Continuous emission monitoring system” or “CEMS” means, except for purposes of subsections

2.15 and 6.2, the total equipment required for the determination of NO_x emission rate, expressed in pounds per million British thermal units (lb/mmBtu). For the purposes of this rule, CEMS is used for continuous compliance determinations. The sample interface, pollutant analyzer, diluent analyzer, and data recorder are the major subsystems of the CEMS. The principal type of continuous emission monitoring system is:

2.6.a. A nitrogen oxides emission rate (or NO_x-diluent) monitoring system, consisting of a NO_x pollutant concentration monitor, a diluent gas (CO₂ or O₂) monitor, and an automated data acquisition and handling system and providing a permanent, continuous record of NO_x concentration, in parts per million (ppm), diluent gas concentration, in percent CO₂ or O₂; and NO_x emission rate, in pounds per million British thermal units (lb/mmBtu);

2.7. "Excess emissions" means nitrogen oxides emitted by an applicable unit under subsection 4.1 during an ozone season that exceeds the ozone season NO_x emissions limitation for the unit set forth in section 5.

2.8. "Fossil fuel" means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

2.9. "Fossil fuel-fired" means, with regard to a unit, and solely for purposes of applying the applicability provisions in subsection 4.1:

2.9.a. The combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than 50 percent of the annual heat input on a Btu basis during any year; or

2.9.b. The combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel is projected to comprise more than 50 percent of the annual heat input on a Btu basis during any year; provided that the unit shall be "fossil fuel-fired" as of the date, during such year, on which the unit begins combusting fossil fuel.

2.10. "Large NO_x SIP call engine" means a stationary internal combustion engine identified and designated as "large" in the NO_x SIP Call Engine Inventory as emitting more than one ton of NO_x per average ozone season day in 1995.

2.11. "Long dry kiln" means a kiln 14 feet or larger in diameter, 400 feet or greater in length, which employs no preheating of the feed. The inlet feed to the kiln is dry.

2.12. "Long wet kiln" means a kiln 14 feet or larger in diameter, 400 feet or greater in length, which employs no preheating of the feed. The inlet feed to the kiln is a slurry.

2.13. "Low-NO_x burners" means combustion equipment designed to reduce flame turbulence, delay fuel/air mixing and establish fuel-rich zones for initial combustion.

2.14. "Mid-kiln firing" means the secondary firing in kilns by injecting solid fuel at an intermediate point in the kiln using a specially designed feed injection mechanism for the purpose of decreasing NO_x emissions through:

2.14.a. Burning part of the fuel at a lower temperature; and

2.14.b. Reducing conditions at the solid waste injection point that may destroy some of the NO_x formed upstream in the kiln burning zone.

2.15. "Monitoring system" means, for purposes of subsection 6.2, a continuous emissions monitoring system, an alternative monitoring system, or an excepted monitoring system under 40 CFR part 75 as defined in 40 CFR §72.2.

2.16. “Nitrogen oxides” or “NO_x” means all oxides of nitrogen except nitrous oxide (N₂O), reported on an equivalent molecular weight basis as nitrogen dioxide (NO₂).

2.17. “NO_x SIP Call Engine Inventory” means the inventory of internal combustion engines compiled by U.S. EPA as part of the NO_x SIP Call Rule, including the technical amendments, announced in the March 2, 2000 Federal Register, page 11222, and the adjustment of the 2007 Budget NO_x Control Efficiency to 82 percent for large gas-fired engines, announced in the April 21, 2004 Federal Register notice, page 21604 for the Phase II NO_x SIP Call Rule.

2.18. “Ozone season” means the period beginning May 1 of a calendar year, and ending on September 30 of the same year, inclusive.

2.19. “Performance Specification 2” or “PS 2” means the Specifications and Test Procedures for SO₂ and NO_x Continuous Emission Monitoring Systems in Stationary Sources provided in Appendix B to 40 CFR part 60. For purposes of subsections 6.3 and 6.5, these procedures are used for measuring CEMS relative accuracy and calibration drift and include CEMS installation and measurement location specifications, equipment specifications, performance specifications, and data reduction.

2.20. “Performance Specification 16” or “PS 16” means the Specifications and Test Procedures for Predictive Emission Monitoring Systems (PEMS) in Stationary Sources provided in Appendix B to 40 CFR part 60. For purposes of subsection 6.4, these procedures are used to determine whether the PEMS is acceptable for use in demonstrating compliance with the NO_x emission limit and to certify the PEMS initially. They are also used periodically thereafter to ensure the PEMS is operating properly. These specifications apply to PEMS that are installed on or after April 24, 2009.

2.21. “Predictive Emission Monitoring System” or “PEMS” means all of the equipment required to predict an emission concentration or emission rate. The system may consist of any of the following major subsystems: sensors and sensor interfaces, emission model, algorithm, or equation that uses process data to generate an output that is proportional to the emission concentration or emission rate, diluent emission model, data recorder, and sensor evaluation system. Systems that use fewer than three (3) variables do not qualify as PEMS unless the system has been specifically approved by the Administrator for use as a PEMS. A PEMS may predict emissions data that are corrected for diluent if the relative accuracy and relevant QA tests are passed in the emission units corrected for diluent. Parametric monitoring systems that serve as indicators of compliance and have parametric limits but do not predict emissions to comply with an emissions limit are not included in this definition.

2.22. “Portland cement” means a hydraulic cement produced by pulverizing clinker consisting essentially of hydraulic calcium silicates, usually containing one or more of the forms of calcium sulfate as an interground addition.

2.23. “Portland cement kiln” means a system, including any solid, gaseous or liquid fuel combustion equipment, used to calcine and fuse raw materials, including limestone and clay, to produce Portland cement clinker.

2.24. “Precalciner kiln” means a kiln where the feed to the kiln system is preheated in cyclone chambers and utilizes a second burner to calcine material in a separate vessel attached to the preheater prior to the final fusion in a kiln which forms clinker.

2.25. “Preheater kiln” means a kiln where the feed to the kiln system is preheated in cyclone chambers prior to the final fusion in a kiln which forms clinker.

2.26. “Secretary” means the Secretary of the Department of Environmental Protection or such other person to whom the Secretary has delegated authority or duties pursuant to W.Va. Code §§22-1-6 or 22-1-

8.

2.27. “Source” means all buildings, structures, or installations located in one or more contiguous or adjacent properties under common control of the same person or persons.

2.28. “Stationary internal combustion engine” or “engine” means any internal combustion engine of the reciprocating type that is either attached to a foundation at a facility or is designed to be capable of being carried or moved from one location to another and remains at a single site at a building, structure, facility, or installation for more than 12 consecutive months. Any engine (or engines) that replaces an engine at a site that is intended to perform the same or similar function as the engine replaced is included in calculating the consecutive time period.

2.29. “Ton” means 2,000 pounds.

2.30. “Unit” means a stationary fossil fuel-fired boiler, combustion turbine, or combined cycle system.

2.31. Other words and phrases used in this rule, unless otherwise indicated, will have the meaning ascribed to them in W.Va. Code §22-5-1 et seq. and 40 CFR §72.2.

§45-40-3. Measurements, abbreviations and acronyms.

3.1. Measurements, abbreviations and acronyms used in this rule are defined as follows:

- 3.1.a. Btu -- British thermal unit.
- 3.1.b. CEMS -- Continuous Emissions Monitoring System.
- 3.1.c. CO₂ -- carbon dioxide.
- 3.1.d. CSAPR -- Cross-State Air Pollution Rule.
- 3.1.e. g/bhp-hr -- grams per brake horsepower hour.
- 3.1.f. Hr -- hour.
- 3.1.g. MmBtu -- million Btu.
- 3.1.h. NO_x -- nitrogen oxides.
- 3.1.i. O₂ -- oxygen.
- 3.1.j. PEMS -- Predictive Emission Monitoring System.
- 3.1.k. SO₂ -- sulfur dioxide.
- 3.1.l. Tph -- tons per hour.
- 3.1.m. Yr -- year.

§45-40-4. Applicability.

4.1. The owner or operator of a unit that has a maximum design heat input greater than 250 MMBtu/hr, except for any unit subject to a seasonal NO_x trading program established under 40 CFR part 97 in accordance with a federal implementation plan set forth in 40 CFR § 52.38(b) or subject to a seasonal NO_x

trading program established under a SIP revision approved by the U.S. EPA as meeting the requirements of 40 CFR § 52.38(b), shall comply with the ozone season NO_x emission limitation, and monitoring, recordkeeping and reporting requirements for ozone season emissions of NO_x set forth in sections 5 and 6 below.

4.2. Effective May 1, 2009, the owner or operator of a large NO_x SIP Call engine shall comply with the ozone season NO_x reduction, compliance plan, monitoring, recordkeeping and reporting requirements set forth in section 9 below.

4.3. Effective May 1, 2009, the owner or operator of a kiln that meets the following applicability requirements shall comply with the ozone season NO_x control standards, ozone season NO_x compliance plan, reporting, monitoring and recordkeeping requirements set forth in section 10 below:

4.3.a. Long dry kilns \geq 12 TPH process rate;

4.3.b. Long wet kilns \geq 10 TPH process rate;

4.3.c. Preheater kilns \geq 16 TPH process rate; and

4.3.d. Precalciner and preheater/precalciner kilns \geq 22 TPH process rate.

§45-40-5. Ozone season NO_x emission limitation.

5.1. Ozone season NO_x limitation. -- Beginning May 1, 2016, the owner or operator of a unit that meets the applicability requirements set forth in subsection 4.1 shall limit emissions of NO_x during an ozone season pursuant to a NO_x emission rate for each unit contained in a permit issued under 45CSR13, 45CSR14, 45CSR19 or via consent order issued by the Secretary in accordance with W.Va. Code §22-5-4(a)(5). Such ozone season NO_x limitation may also include a limitation on operating time for a unit during the ozone season.

§45-40-6. Monitoring, recordkeeping and reporting requirements.

6.1. The owner or operator of an applicable unit under subsection 4.1 shall comply with the provisions of 40 CFR part 75, subpart H (including use of any of the emissions monitoring methodologies which the unit qualifies to use under 40 CFR part 75) or shall install and operate a certified continuous emission monitoring system (CEMS) or a certified predictive emission monitoring system (PEMS) as necessary to attribute ozone season mass emissions of NO_x to each unit in accordance with subsection 6.2, 6.3, 6.4 or 6.5 below. Nitrogen oxides mass emissions measurements recorded and reported in accordance with subsection 6.2, 6.3, 6.4 or 6.5 shall be used to determine a unit's compliance with the ozone season NO_x emission limitation set forth in section 5.

6.2. An owner or operator that elects to demonstrate compliance in accordance with 40 CFR part 75, subpart H, shall meet the following requirements:

6.2.a. Install, calibrate, certify, maintain, monitor, and operate all required monitoring systems in accordance with 40 CFR part 75, subpart H;

6.2.b. Maintain records in accordance with 40 CFR part 75, subpart H ; and

6.2.c. Submit reports in accordance with 40 CFR part 75, subpart H.

6.3. An owner or operator that elects to demonstrate compliance using a CEMS in accordance with 40 CFR part 60, subpart Db and 45CSR16 shall meet the following requirements:

6.3.a. Install and certify the CEMS in accordance with Performance Specification 2 in Appendix B to 40 CFR part 60;

6.3.b. Operate and maintain the CEMS in accordance with 40 CFR §60.46b on a continuous basis;

6.3.c. Install, calibrate, maintain and operate the CEMS in accordance with the continuous monitoring requirements of:

6.3.c.1. 40 CFR §§60.48b and 60.13; or

6.3.c.2. 40 CFR §§60.47b(e) and 60.13;

6.3.d. For each month of the ozone season:

6.3.d.1. Determine total monthly heat input (in mmBtu) using fuel flowmeters and measurements or records of fuel gross calorific value, or in instances where fuel flow is not metered determine total monthly heat input (in mmBtu) from other measurements and records; and

6.3.d.2. Calculate total monthly NO_x mass emissions (in tons) by multiplying the total monthly heat input by the 30-day rolling average NO_x emission rate (in lb/mmBtu) determined under subdivisions 6.3.b and 6.3.c for the last day of the month on which the unit operated and divide by 2000;

6.3.e. Determine the total NO_x mass emissions for the ozone season (in tons) by summing the amounts of total monthly NO_x mass emissions calculated under subdivision 6.3.d for each month of the ozone season; and

6.3.f. Comply with the following reporting and recordkeeping requirements:

6.3.f.1. Maintain records in accordance with 40 CFR §60.49b and all additional records necessary to support the heat input data, 30-day rolling average NO_x emission rate data, and NO_x mass emissions computations described in subdivisions 6.3.d and 6.3.e; and

6.3.f.2. Submit to the Secretary reports in accordance with 40 CFR §60.49b and include the total monthly heat input data, 30-day rolling average NO_x emission rate data, and monthly and ozone season NO_x mass emissions computations described in subdivisions 6.3.d and 6.3.e.

6.4. An owner or operator not otherwise required to use a CEMS to demonstrate compliance with 40 CFR part 60 may elect to demonstrate compliance using a PEMS and shall meet the following requirements:

6.4.a. Install and certify the PEMS in accordance with Performance Specification 16 in Appendix B to 40 CFR part 60 and the Quality Assurance Procedures for compliance PEMS in Appendix F to 40 CFR part 60;

6.4.b. Submit to the Secretary for approval a plan that identifies the operating conditions to be monitored and the records to be maintained in accordance with 40 CFR §60.49b(c). The request for plan approval shall be contained in the permit application or consent order required under subsection 6.6;

6.4.c. Operate and maintain the compliance PEMS on a continuous basis in accordance with 40 CFR §60.46b and the compliance PEMS requirements provided in Performance Specification 16 in Appendix B to 40 CFR part 60;

6.4.d. Comply with the continuous monitoring requirements of 40 CFR §§60.48b and 60.13;

6.4.e. For each month of the ozone season:

6.4.e.1. Determine total monthly heat input (in mmBtu) using fuel flowmeters and measurements or records of fuel gross calorific value, or in instances where fuel flow is not metered determine total monthly heat input (in mmBtu) from other measurements and records; and

6.4.e.2. Calculate total monthly NO_x mass emissions (in tons) by multiplying the total monthly heat input by the 30-day rolling average NO_x emission rate (in lb/mmBtu) determined under subdivisions 6.4.c and 6.4.d for the last day of the month on which the unit operated and divide by 2000;

6.4.f. Determine the total NO_x mass emissions for the ozone season (in tons) by summing the amounts of total monthly NO_x mass emissions calculated under subdivision 6.4.e for each month of the ozone season; and

6.4.g. Comply with the following reporting and recordkeeping requirements:

6.4.g.1. Maintain records in accordance with 40 CFR §60.49b and all additional records necessary to support the heat input data, 30-day rolling average NO_x emission rate data, and NO_x mass emissions computations described in subdivisions 6.4.e and 6.4.f; and

6.4.g.2. Submit to the Secretary reports in accordance with 40 CFR §60.49b and include the total monthly heat input data, 30-day rolling average NO_x emission rate data, and monthly and ozone season NO_x mass emissions computations described in subdivisions 6.4.e and 6.4.f.

6.5. An owner or operator of a combustion turbine unit that elects to demonstrate compliance using a CEMS shall meet the following requirements:

6.5.a. Install and certify the CEMS in accordance with Performance Specification 2 in Appendix B to 40 CFR part 60 and 45CSR16;

6.5.b. Conduct the performance tests in accordance with 40 CFR §60.4400;

6.5.c. Operate and maintain the CEMS in accordance with 40 CFR §60.4345 on a continuous basis;

6.5.d. Collect all CEMS data in accordance with 40 CFR §60.4350;

6.5.e. For each month of the ozone season:

6.5.e.1. Determine total monthly heat input (in mmBtu) using fuel flowmeters and measurements or records of fuel gross calorific value, or in instances where fuel flow is not metered determine total monthly heat input (in mmBtu) from other measurements and records; and

6.5.e.2. Calculate total monthly NO_x mass emissions (in tons) by multiplying the total monthly heat input by the 30-day rolling average NO_x emission rate (in lb/mmBtu) determined under subdivisions 6.5.c and 6.5.d for the last day of the month on which the unit operated and divide by 2000;

6.5.f. Determine the total NO_x mass emissions for the ozone season (in tons) by summing the amounts of total monthly NO_x mass emissions calculated under subdivision 6.5.e for each month of the ozone season; and

6.5.g. Comply with the following reporting and recordkeeping requirements:

6.5.g.1. Maintain records in accordance with 40 CFR §60.49b and all additional records necessary to support the heat input data, 30-day rolling average NO_x emission rate data, and NO_x mass

emissions computations described in subdivisions 6.5.e and 6.5.f; and

6.4.g.2. Submit to the Secretary reports in accordance with 40 CFR §60.49b and include the total monthly heat input data, 30-day rolling average NO_x emission rate data, and monthly and ozone season NO_x mass emissions computations described in subdivisions 6.5.e and 6.5.f.

6.6. An owner or operator that elects an alternative monitoring scenario that is not currently contained in a permit issued pursuant to 45CSR13, 45CSR14 or 45CSR19 or via a consent order shall:

6.6.a. Submit a request for the alternative monitoring scenario in a permit application in accordance with 45CSR13, 45CSR14 or 45CSR19. For compliance options provided in 6.3, 6.4 or 6.5, the permit application should identify how NO_x emissions (in tons) will be determined using the CEMS or PEMS data; and.

6.6.b. Obtain approval from the Secretary via a permit issued under 45CSR13, 45CSR14 or 45CSR19 or via a consent order, effective prior to the start of the ozone season.

6.7. An owner or operator electing to demonstrate compliance with 40 CFR part 75, subpart H shall not use any alternative monitoring system, alternative reference method, or any other alternative for the requirements under 40 CFR part 75, subpart H prior to obtaining written approval by the Administrator in accordance with 40 CFR §75.70(h).

6.8. An owner or operator required to demonstrate compliance with a NO_x emissions limit under 40 CFR part 60, subpart Db shall not use an alternative monitoring system, reference method, or other CEMS requirements alternative under 40 CFR part 60, subpart Db prior to obtaining written approval by the Administrator.

6.9. The owner or operator of an applicable unit under subsection 4.1 may demonstrate compliance with the NO_x ozone season emission limitation set forth in section 5 in accordance with an alternative monitoring system under 40 CFR part 60, subpart Db without obtaining approval of the Secretary, provided the owner or operator obtained written approval from the Administrator prior to the effective date of this rule.

§45-40-7. Violation.

7.1. The owner or operator of an applicable unit under subsection 4.1 shall be subject to enforcement pursuant to W.Va. Code §22-5-1 et seq. or the CAA for excess emissions of NO_x during an ozone season if the unit emitted nitrogen oxides in excess of its ozone season NO_x emission limitation set forth in section 5.

§45-40-8. Ozone season NO_x budget demonstration.

8.1. Ozone season NO_x budget. -- The ozone season NO_x budget for all units that meet the applicability requirements set forth in subsection 4.1 is 2,184 tons.

8.2. Ozone season NO_x budget demonstration. -- Through the imposition of ozone season NO_x limitations under section 5, and assumption of maximum operating capacity or use of a limitation on operating time for a unit during the ozone season, the Secretary shall demonstrate to the Administrator that the ozone season NO_x emissions from all applicable units under subsection 4.1 meets the ozone season NO_x budget for these units set forth in subsection 8.1.

8.3. New units. -- The Secretary shall revise the ozone season NO_x budget demonstration under subsection 8.2 to accommodate the ozone season NO_x emissions of any new unit that meets the applicability requirements set forth in subsection 4.1. The ozone season NO_x emissions from any such new unit shall

not cause the ozone season NO_x budget set forth in subsection 8.1 to be exceeded.

§45-40-9. Ozone season NO_x reduction requirements for stationary internal combustion engines.

9.1. Ozone season NO_x reduction. -- Effective May 1, 2009, the following owners or operators must reduce ozone season NO_x emissions by an amount equal to or greater than the applicable ozone season NO_x reduction listed in the table below. The applicable ozone season NO_x reduction is binding on the listed owners or operators, their successors and assigns:

Company	Ozone Season NO _x Reduction
Dominion	668 tons
Columbia Gas Transmission	235 tons
Total	903 tons

9.2. Compliance plan. -- Effective May 1, 2009, an owner or operator of a large stationary internal combustion engine under subsection 4.2 must not operate such engine in the period May 1 through September 30 of 2009 and any subsequent year unless the owner or operator demonstrates the applicable ozone season NO_x reduction under subsection 9.1 through the requirements of an approved compliance plan. The compliance plan shall meet the following provisions:

9.2.a. Reserved;

9.2.b. Reserved;

9.2.c. The compliance plan must demonstrate quantifiable and enforceable NO_x emission reductions equal to or greater than the applicable ozone season NO_x reduction set forth in subsection 9.1, taking into account any creditable reduction in NO_x emissions under subdivisions 9.2.e, 9.2.f, 9.2.g, 9.2.h or 9.2.i;

9.2.d. The compliance plan may include and affect some or all stationary internal combustion engines or other significant NO_x emitting equipment at an individual facility, at several facilities, or at all facilities in West Virginia that are controlled by the same owner or operator;

9.2.e. The compliance plan may include credit for reductions in NO_x emissions due to the installation and operation of NO_x control equipment on large stationary internal combustion engines under subsection 9.1. The owner or operator will demonstrate to the satisfaction of the Secretary any creditable reductions in NO_x emissions from the installation and operation of such NO_x control equipment. The credit for reductions in NO_x emissions must be quantified based on the difference between uncontrolled and controlled NO_x emission rates, and ozone season operating hours;

9.2.f. The compliance plan may include credit for reductions in NO_x emissions due to the installation and operation of NO_x control equipment on uncontrolled stationary internal combustion engines not under subsection 4.2. The owner or operator will demonstrate to the satisfaction of the Secretary any creditable reductions in NO_x emissions from the installation and operation of such NO_x control equipment. Creditable reductions must be limited to reductions achieved after 1995 and from controls that were not part of the NO_x SIP Call engine inventory. The credit for reductions in NO_x emissions must be quantified based on the difference between uncontrolled and controlled NO_x emission rates, and ozone season operating hours;

9.2.g. The compliance plan may include credit for reductions in NO_x emissions due to replacement of any stationary internal combustion engines or other significant NO_x emitting equipment. The owner or operator will demonstrate to the satisfaction of the Secretary that the historic ozone season

load capacity of any stationary internal combustion engine or other significant NO_x emitting equipment no longer in operation has been or would be replaced by one or more new stationary internal combustion engines, electric motors or turbines during each ozone season. The credit for reductions in NO_x emissions must be quantified based on the replaced engine's or other significant NO_x emitting equipment's ozone season NO_x emission rate and ozone season operating hours, and the projected emission rate and ozone season operating hours of any new replacement stationary internal combustion engines, electric motors or turbines;

9.2.h. The compliance plan may include credit for reductions in NO_x emissions due to reductions from shifting historic load capacity from an uncontrolled engine to a controlled engine, electric motor or turbine. The owner or operator will demonstrate to the satisfaction of the Secretary that a quantifiable net reduction in NO_x emissions has occurred or will occur due to a direct shift of ozone season load capacity from an uncontrolled engine to a controlled engine, electric motor or turbine. The credit for reductions in NO_x emissions must be quantified based on the uncontrolled engine's historic ozone season load capacity, NO_x emission rate (in g/bhp-hr), ozone season operating hours (in hr/ozone season), and the shifted ozone season load capacity, NO_x emission rate (in g/bhp-hr) and ozone season operating hours (in hr/ozone season) of the controlled stationary internal combustion engine, electric motor or turbine;

9.2.i. The compliance plan may include credit for reductions in NO_x emissions due to the installation and operation of NO_x controls on significant NO_x emitting equipment other than stationary internal combustion engines. The owner or operator will demonstrate to the satisfaction of the Secretary any creditable reductions in NO_x emissions from such NO_x emitting equipment. Creditable reductions must be limited to reductions achieved after 1995 and from controls that were not part of the NO_x SIP Call inventory. The credit for reductions in NO_x emissions must be quantified based on the difference between NO_x emission rates prior to installation of controls and controlled NO_x emission rates, and ozone season operating hours;

9.2.j. The compliance plan must include the following:

9.2.j.1. A list of affected engines or affected NO_x emitting equipment subject to the plan, including the manufacturer, model number, facility location and facility identification number;

9.2.j.2. The projected ozone season hours of operation for each affected engine or affected NO_x emitting equipment and supporting documentation;

9.2.j.3. A description of the NO_x emission controls installed, or to be installed, on each affected engine or affected NO_x emitting equipment, date or proposed date of installation, and documentation to support the controlled NO_x emission rates;

9.2.j.4. The uncontrolled and controlled NO_x emission rates in lb/hr and tons per ozone season for each affected engine or affected NO_x emitting equipment, as applicable;

9.2.j.5. A numerical demonstration that the sum of creditable NO_x emission reductions (in tons) obtained from all affected engines or affected NO_x emitting equipment included under a compliance plan will be equivalent to or greater than the owner or operator's applicable ozone season NO_x reduction under subsection 9.1, taking into account any creditable reductions in NO_x emissions under subdivisions 9.2.e, 9.2.f, 9.2.g, 9.2.h or 9.2.i; and

9.2.j.6. Performance test protocol and provisions for periodic monitoring, reporting and recordkeeping for each affected engine or affected NO_x emitting equipment.

9.2.k. Any creditable reductions in NO_x emissions under subdivisions 9.2.e, 9.2.f, 9.2.g, 9.2.h or 9.2.i must be quantifiable and enforceable through limitations included in a federally enforceable permit or compliance order; and

9.2.1. Any owner or operator with an approved compliance plan under subsection 9.2 may amend the plan with the written approval of the Secretary. Any NO_x emission rate or limitation included in such an amendment must be reflected in a federally enforceable permit or compliance order. The Secretary will either approve by order or disapprove in writing the amended compliance plan within 90 days of submission, and notify the Administrator of the compliance plan amendment approval upon issuance of order.

9.3. Monitoring requirements. -- Any owner or operator of an affected engine or affected NO_x emitting equipment subject to a compliance plan under subsection 9.2 must comply with the following monitoring requirements for each affected engine or affected NO_x emitting equipment:

9.3.a. The owner or operator must complete an initial performance test consistent with the requirements of 40 CFR part 60, Appendix A and 45CSR16, following installation of NO_x emission controls required to achieve the NO_x emission rate limit specified in subdivision 9.2.k; and

9.3.b. For the ozone season beginning in 2009, and each ozone season thereafter, the owner or operator will perform periodic monitoring sufficient to yield reliable data which demonstrate compliance with the limitations specified in subdivision 9.2.k. Such periodic monitoring must include:

9.3.b.1. A continuous emission monitoring system that complies with 40 CFR part 75 or 40 CFR part 60 and 45CSR16 and the quality assurance procedures specified in 40 CFR part 60, Appendix F and 45CSR16; or

9.3.b.2. Performance tests consistent with the requirements of 40 CFR part 60, Appendix A and 45CSR16, or portable monitors using ASTM D6522-00; and

9.3.b.2.A. A parametric monitoring program that specifies operating parameters, and their ranges, that will provide reasonable assurance that each affected engine or affected NO_x emitting equipment's emissions are consistent with the requirements of a compliance plan under subsection 9.2. Any such parametric monitoring program must be approved by the Secretary; or

9.3.b.2.B. A predictive emissions measurement system that relies on automated data collection from instruments. Any such predictive emissions measurement system must be approved by the Secretary.

9.4. Recordkeeping requirements. -- Any owner or operator of an affected engine or affected NO_x emitting equipment subject to a compliance plan under subsection 9.2 must comply with the following recordkeeping requirements:

9.4.a. Maintain all records necessary to demonstrate compliance with the requirements of the compliance plan and subsection 9.4 for a period of five calendar years at the facility where an affected engine or affected NO_x emitting equipment is located. Such records will be made available to the Secretary or Administrator upon request; and

9.4.b. For each affected engine or affected NO_x emitting equipment subject to a compliance plan under subsection 9.2, the owner or operator will maintain records of:

9.4.b.1. Identification and location of each affected engine or affected NO_x emitting equipment;

9.4.b.2. Calendar date of record;

9.4.b.3. The number of hours the affected engine or affected NO_x emitting equipment is

operated during each ozone season compared to projected operating hours;

9.4.b.4. Type and quantity of fuel combusted; and

9.4.b.5. The results of all compliance tests.

9.5. Reporting requirements. -- Any owner or operator of an affected engine or affected NO_x emitting equipment subject to a compliance plan under subsection 9.2 must:

9.5.a. Notify the Secretary of any performance test under paragraph 9.3.b.2 at least 15 days in advance of such test;

9.5.b. Submit results of all performance tests to the Secretary within 30 days of completion of such tests; and

9.5.c. Submit a report which documents the total ozone season NO_x emissions and certifies compliance with the compliance plan for each affected engine or affected NO_x emitting equipment to the Secretary by October 31 of each year, beginning in 2009. The report must demonstrate and certify compliance with the applicable ozone season NO_x reduction set forth in subsection 9.1.

§45-40-10. Ozone season NO_x reduction requirements for emissions of NO_x from cement manufacturing kilns.

10.1. Standard requirements. -- Effective May 1, 2009, an owner or operator of any Portland cement kiln subject to this section must not operate the kiln during May 1 through September 30 unless the kiln has installed and operates during May 1 to September 30 with low-NO_x burners, mid-kiln firing or alternative control techniques, subject to approval by the Administrator, that achieve at least the same emissions decreases as low-NO_x burners or mid-kiln firing.

10.2. NO_x compliance plan. -- Any owner or operator of a source subject to the standard requirements of subsection 10.1 may elect to use NO_x reductions from any non-affected kiln at a source with a Portland cement kiln under subsection 4.3. If the owner or operator so elects, he or she must submit for approval to the Administrator by May 1, 2009, a NO_x compliance plan which demonstrates the method(s) by which the operator will achieve NO_x reductions from non-affected kilns which achieve at least the same emissions decreases set forth in the standard requirements of subsection 10.1.

10.3. Reporting requirements. -- Any owner or operator subject to the standard requirements of subsection 10.1 must comply with the following reporting requirements:

10.3.a. By May 1, 2009, submit to the Secretary and Administrator the identification number and type of each kiln subject to this section, the name and address of the plant where the kiln is located and the name and telephone number of the person responsible for demonstrating compliance with this section; and

10.3.b. Submit a report documenting for that kiln the total NO_x emissions from May 1 through September 30 of each year to the Secretary and Administrator by October 31 of each year, beginning in 2009.

10.4. Monitoring requirements.

10.4.a. Any owner or operator of a kiln subject to this section must complete an initial performance test and subsequent annual testing consistent with the requirements of 40 CFR part 60, Appendix A, Method 7, 7A, 7C, 7D or 7E; and 45CSR16; and

10.4.b. The operator may use the results of continuous emission monitoring system (CEMS) to

replace the annual testing requirements set forth in subdivision 10.4.a. Such equipment must be installed and operated consistent with 40 CFR part 75.

10.5. Recordkeeping requirements. -- Any owner or operator of a kiln subject to this section must produce and maintain records which include, but are not limited to:

10.5.a. The emissions, in pounds of NO_x per ton of clinker produced from each affected Portland cement kiln;

10.5.b. The type of control used for each affected Portland cement kiln;

10.5.c. The date, time and duration of any startup, shutdown or malfunction in the operation of any of the cement kilns or the emissions monitoring equipment;

10.5.d. The results of any performance testing;

10.5.e. Daily cement kiln production records; and

10.5.f. All records required to be produced or maintained will be retained on site for a minimum of 5 years and be made available to the Secretary or Administrator upon request.

§45-40-11. Inconsistency between rules.

11.1. In the event of any inconsistency between this rule and any other rule of the Division of Air Quality, the inconsistency will be resolved by the determination of the Secretary and the determination will be based upon the application of the more stringent provision, term, condition, method or rule.

45CSR40
NOTICE OF MODIFICATION FILING

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WEST VIRGINIA SECRETARY OF STATE
MAC WARNER
ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Air Quality

RULE TYPE: Legislative

TITLE-SERIES: 45-40

RULE NAME: CONTROL OF OZONE SEASON
NITROGEN OXIDES EMISSIONS

CITE AUTHORITY: W. Va. Code § 22-5-4.

The above proposed Legislative rules, following review by the Legislative Rule Making Review Committee, is hereby modified as a result of review and comment by the Legislative Rule Making Review Committee. The attached modifications are filed with the Secretary of State.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Jason E Wandling -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 45
LEGISLATIVE RULE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
AIR QUALITY

SERIES 40
CONTROL OF OZONE SEASON NITROGEN OXIDES EMISSIONS

§45-40-1. General.

1.1. Scope. -- This rule establishes:

1.1.a. Ozone season NO_x emission limitation, monitoring, recordkeeping, reporting, excess emissions, and NO_x budget demonstration requirements for large industrial boilers and combustion turbines that have a maximum design heat input greater than 250 ~~mm~~MMBTU/hr, in accordance with 40 CFR §51.121;

1.1.b. Ozone season NO_x reduction, compliance plan, monitoring, recordkeeping and reporting requirements for affected stationary internal combustion engines; and

1.1.c. Ozone season NO_x control standards, ozone season NO_x compliance plan, reporting, monitoring and recordkeeping requirements for applicable cement manufacturing kilns.

1.2. Authority. -- W.Va. Code §22-5-4.

1.3. Filing Date. -- ~~June 1, 2020~~.

1.4. Effective Date. -- ~~June 1, 2020~~.

1.5. Sunset Provision. -- Exempt.

§45-40-2. Definitions.

2.1. “Administrator” means the Administrator of the United States Environmental Protection Agency (U.S. EPA) or the Administrator’s duly authorized representative.

2.2. “Boiler” means an enclosed fossil or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

2.3. “Clean Air Act” or “CAA” means the Clean Air Act, 42 U.S.C. 7401, et seq., as amended.

2.4. “Clinker” means the product of a Portland cement kiln from which finished cement is manufactured by milling and grinding.

2.5. “Combustion turbine” means:

2.5.a. An enclosed device comprising a compressor, a combustor, and a turbine and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine; and

2.5.b. If the enclosed device under subdivision 2.6.a is combined cycle, any associated duct burner, heat recovery steam generator, and steam turbine.

2.6. “Continuous emission monitoring system” or “CEMS” means, except for purposes of subsections 2.15 and 6.2, the total equipment required for the determination of NO_x emission rate, expressed in pounds per million British thermal units (lb/mmBtu). For the purposes of this rule, CEMS is used for continuous compliance determinations. The sample interface, pollutant analyzer, diluent analyzer, and data recorder are the major subsystems of the CEMS. The principal type of continuous emission monitoring system is:

2.6.a. A nitrogen oxides emission rate (or NO_x-diluent) monitoring system, consisting of a NO_x pollutant concentration monitor, a diluent gas (CO₂ or O₂) monitor, and an automated data acquisition and handling system and providing a permanent, continuous record of NO_x concentration, in parts per million (ppm), diluent gas concentration, in percent CO₂ or O₂; and NO_x emission rate, in pounds per million British thermal units (lb/mmBtu);

2.7. “Excess emissions” means nitrogen oxides emitted by an applicable unit under subsection 4.1 during an ozone season that exceeds the ozone season NO_x emissions limitation for the unit set forth in section 5.

2.8. “Fossil fuel” means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

2.9. “Fossil fuel-fired” means, with regard to a unit, and solely for purposes of applying the applicability provisions in subsection 4.1:

2.9.a. The combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than 50 percent of the annual heat input on a Btu basis during any year; or

2.9.b. The combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel is projected to comprise more than 50 percent of the annual heat input on a Btu basis during any year; provided that the unit shall be “fossil fuel-fired” as of the date, during such year, on which the unit begins combusting fossil fuel.

2.10. “Large NO_x SIP call engine” means a stationary internal combustion engine identified and designated as “large” in the NO_x SIP Call Engine Inventory as emitting more than one ton of NO_x per average ozone season day in 1995.

2.11. “Long dry kiln” means a kiln 14 feet or larger in diameter, 400 feet or greater in length, which employs no preheating of the feed. The inlet feed to the kiln is dry.

2.12. “Long wet kiln” means a kiln 14 feet or larger in diameter, 400 feet or greater in length, which employs no preheating of the feed. The inlet feed to the kiln is a slurry.

2.13. “Low-NO_x burners” means combustion equipment designed to reduce flame turbulence, delay fuel/air mixing and establish fuel-rich zones for initial combustion.

2.14. “Mid-kiln firing” means the secondary firing in kilns by injecting solid fuel at an intermediate point in the kiln using a specially designed feed injection mechanism for the purpose of decreasing NO_x emissions through:

2.14.a. Burning part of the fuel at a lower temperature; and

2.14.b. Reducing conditions at the solid waste injection point that may destroy some of the NO_x formed upstream in the kiln burning zone.

2.15. “Monitoring system” means, for purposes of subsection 6.2, a continuous emissions monitoring system, an alternative monitoring system, or an excepted monitoring system under 40 CFR part 75 as

defined in 40 CFR §72.2.

2.16. “Nitrogen oxides” or “NO_x” means all oxides of nitrogen except nitrous oxide (N₂O), reported on an equivalent molecular weight basis as nitrogen dioxide (NO₂).

2.17. “NO_x SIP Call Engine Inventory” means the inventory of internal combustion engines compiled by U.S. EPA as part of the NO_x SIP Call Rule, including the technical amendments, announced in the March 2, 2000 Federal Register, page 11222, and the adjustment of the 2007 Budget NO_x Control Efficiency to 82 percent for large gas-fired engines, announced in the April 21, 2004 Federal Register notice, page 21604 for the Phase II NO_x SIP Call Rule.

2.18. “Ozone season” means the period beginning May 1 of a calendar year, and ending on September 30 of the same year, inclusive.

2.19. “Performance Specification 2” or “PS 2” means the Specifications and Test Procedures for SO₂ and NO_x Continuous Emission Monitoring Systems in Stationary Sources provided in Appendix B to 40 CFR part 60. For purposes of subsections 6.3 and 6.5, these procedures are used for measuring CEMS relative accuracy and calibration drift and include CEMS installation and measurement location specifications, equipment specifications, performance specifications, and data reduction.

2.20. “Performance Specification 16” or “PS 16” means the Specifications and Test Procedures for Predictive Emission Monitoring Systems (PEMS) in Stationary Sources provided in Appendix B to 40 CFR part 60. For purposes of subsection 6.4, these procedures are used to determine whether the PEMS is acceptable for use in demonstrating compliance with the NO_x emission limit and to certify the PEMS initially. They are also used periodically thereafter to ensure the PEMS is operating properly. These specifications apply to PEMS that are installed on or after April 24, 2009.

2.21. “Predictive Emission Monitoring System” or “PEMS” means all of the equipment required to predict an emission concentration or emission rate. The system may consist of any of the following major subsystems: sensors and sensor interfaces, emission model, algorithm, or equation that uses process data to generate an output that is proportional to the emission concentration or emission rate, diluent emission model, data recorder, and sensor evaluation system. Systems that use fewer than three (3) variables do not qualify as PEMS unless the system has been specifically approved by the Administrator for use as a PEMS. A PEMS may predict emissions data that are corrected for diluent if the relative accuracy and relevant QA tests are passed in the emission units corrected for diluent. Parametric monitoring systems that serve as indicators of compliance and have parametric limits but do not predict emissions to comply with an emissions limit are not included in this definition.

2.22. “Portland cement” means a hydraulic cement produced by pulverizing clinker consisting essentially of hydraulic calcium silicates, usually containing one or more of the forms of calcium sulfate as an interground addition.

2.23. “Portland cement kiln” means a system, including any solid, gaseous or liquid fuel combustion equipment, used to calcine and fuse raw materials, including limestone and clay, to produce Portland cement clinker.

2.24. “Precalciner kiln” means a kiln where the feed to the kiln system is preheated in cyclone chambers and utilizes a second burner to calcine material in a separate vessel attached to the preheater prior to the final fusion in a kiln which forms clinker.

2.25. “Preheater kiln” means a kiln where the feed to the kiln system is preheated in cyclone chambers prior to the final fusion in a kiln which forms clinker.

2.26. “Secretary” means the Secretary of the Department of Environmental Protection or such other

person to whom the Secretary has delegated authority or duties pursuant to W.Va. Code §§22-1-6 or 22-1-8.

2.27. “Source” means all buildings, structures, or installations located in one or more contiguous or adjacent properties under common control of the same person or persons.

2.28. “Stationary internal combustion engine” or “engine” means any internal combustion engine of the reciprocating type that is either attached to a foundation at a facility or is designed to be capable of being carried or moved from one location to another and remains at a single site at a building, structure, facility, or installation for more than 12 consecutive months. Any engine (or engines) that replaces an engine at a site that is intended to perform the same or similar function as the engine replaced is included in calculating the consecutive time period.

2.29. “Ton” means 2,000 pounds.

2.30. “Unit” means a stationary fossil fuel-fired boiler, combustion turbine, or combined cycle system.

2.31. Other words and phrases used in this rule, unless otherwise indicated, will have the meaning ascribed to them in W.Va. Code §22-5-1 et seq. and 40 CFR §72.2.

§45-40-3. Measurements, abbreviations and acronyms.

3.1. Measurements, abbreviations and acronyms used in this rule are defined as follows:

3.1.a. Btu -- British thermal unit.

3.1.b. CEMS -- Continuous Emissions Monitoring System.

3.1.c. CO₂ -- carbon dioxide.

3.1.d. CSAPR -- Cross-State Air Pollution Rule.

3.1.e. g/bhp-hr -- grams per brake horsepower hour.

3.1.f. Hr -- hour.

3.1.g. MmBtu -- million Btu.

3.1.h. NO_x -- nitrogen oxides.

3.1.i. O₂ -- oxygen.

3.1.j. PEMS -- Predictive Emission Monitoring System.

3.1.k. SO₂ -- sulfur dioxide.

3.1.l. Tph -- tons per hour.

3.1.m. Yr -- year.

§45-40-4. Applicability.

4.1. The owner or operator of a unit that has a maximum design heat input greater than 250 ~~mm~~MMBtu/hr, except for any unit subject to ~~the federal Cross State Air Pollution Rule (CSAPR) NO_x~~

~~Ozone Season Group 2, a seasonal NO_x trading program established under 40 CFR part 97, subpart EEEEE, or an equivalent trading program established under 45CSR43 and approved as a state implementation plan revision pursuant to 40 CFR §52.38(b)(9), in accordance with a federal implementation plan set forth in 40 CFR § 52.38(b) or subject to a seasonal NO_x trading program established under a SIP revision approved by the U.S. EPA as meeting the requirements of 40 CFR § 52.38(b), shall comply with the ozone season NO_x emission limitation, and monitoring, recordkeeping and reporting requirements for ozone season emissions of NO_x set forth in sections 5 and 6 below.~~

4.2. Effective May 1, 2009, the owner or operator of a large NO_x SIP Call engine shall comply with the ozone season NO_x reduction, compliance plan, monitoring, recordkeeping and reporting requirements set forth in section 9 below.

4.3. Effective May 1, 2009, the owner or operator of a kiln that meets the following applicability requirements shall comply with the ozone season NO_x control standards, ozone season NO_x compliance plan, reporting, monitoring and recordkeeping requirements set forth in section 10 below:

- 4.3.a. Long dry kilns \geq 12 TPH process rate;
- 4.3.b. Long wet kilns \geq 10 TPH process rate;
- 4.3.c. Preheater kilns \geq 16 TPH process rate; and
- 4.3.d. Precalciner and preheater/precalciner kilns \geq 22 TPH process rate.

§45-40-5. Ozone season NO_x emission limitation.

5.1. Ozone season NO_x limitation. -- Beginning May 1, 2016, the owner or operator of a unit that meets the applicability requirements set forth in subsection 4.1 shall limit emissions of NO_x during an ozone season pursuant to a NO_x emission rate for each unit contained in a permit issued under 45CSR13, 45CSR14, 45CSR19 or via consent order issued by the Secretary in accordance with W.Va. Code §22-5-4(a)(5). Such ozone season NO_x limitation may also include a limitation on operating time for a unit during the ozone season.

§45-40-6. Monitoring, recordkeeping and reporting requirements.

6.1. The owner or operator of an applicable unit under subsection 4.1 shall comply with the provisions of 40 CFR part 75, subpart H (including use of any of the emissions monitoring methodologies which the unit qualifies to use under 40 CFR part 75) or shall install and operate a certified continuous emission monitoring system (CEMS) or a certified predictive emission monitoring system (PEMS) as necessary to attribute ozone season mass emissions of NO_x to each unit in accordance with subsection 6.2, 6.3, 6.4 or 6.5 below. Nitrogen oxides mass emissions measurements recorded and reported in accordance with subsection 6.2, 6.3, 6.4 or 6.5 shall be used to determine a unit's compliance with the ozone season NO_x emission limitation set forth in section 5.

6.2. An owner or operator that elects to demonstrate compliance in accordance with 40 CFR part 75, subpart H, shall meet the following requirements:

- 6.2.a. Install, calibrate, certify, maintain, monitor, and operate all required monitoring systems in accordance with 40 CFR part 75, subpart H;
- 6.2.b. Maintain records in accordance with 40 CFR part 75, subpart H ; and
- 6.2.c. Submit reports in accordance with 40 CFR part 75, subpart H.

6.3. An owner or operator that elects to demonstrate compliance using a CEMS in accordance with 40 CFR part 60, subpart Db and 45CSR16 shall meet the following requirements:

6.3.a. Install and certify the CEMS in accordance with Performance Specification 2 in Appendix B to 40 CFR part 60;

6.3.b. Operate and maintain the CEMS in accordance with 40 CFR §60.46b on a continuous basis;

6.3.c. Install, calibrate, maintain and operate the CEMS in accordance with the continuous monitoring requirements of:

6.3.c.1. 40 CFR §§60.48b and 60.13; or

6.3.c.2. 40 CFR §§60.47b(e) and 60.13;

6.3.d. For each month of the ozone season:

6.3.d.1. Determine total monthly heat input (in mmBtu) using fuel flowmeters and measurements or records of fuel gross calorific value, or in instances where fuel flow is not metered determine total monthly heat input (in mmBtu) from other measurements and records; and

6.3.d.2. Calculate total monthly NO_x mass emissions (in tons) by multiplying the total monthly heat input by the 30-day rolling average NO_x emission rate (in lb/mmBtu) determined under subdivisions 6.3.b and 6.3.c for the last day of the month on which the unit operated and divide by 2000;

6.3.e. Determine the total NO_x mass emissions for the ozone season (in tons) by summing the amounts of total monthly NO_x mass emissions calculated under subdivision 6.3.d for each month of the ozone season; and

6.3.f. Comply with the following reporting and recordkeeping requirements:

6.3.f.1. Maintain records in accordance with 40 CFR §60.49b and all additional records necessary to support the heat input data, 30-day rolling average NO_x emission rate data, and NO_x mass emissions computations described in subdivisions 6.3.d and 6.3.e; and

6.3.f.2. Submit to the Secretary reports in accordance with 40 CFR §60.49b and include the total monthly heat input data, 30-day rolling average NO_x emission rate data, and monthly and ozone season NO_x mass emissions computations described in subdivisions 6.3.d and 6.3.e.

6.4. An owner or operator not otherwise required to use a CEMS to demonstrate compliance with 40 CFR part 60 may elect to demonstrate compliance using a PEMS and shall meet the following requirements:

6.4.a. Install and certify the PEMS in accordance with Performance Specification 16 in Appendix B to 40 CFR part 60 and the Quality Assurance Procedures for compliance PEMS in Appendix F to 40 CFR part 60;

6.4.b. Submit to the Secretary for approval a plan that identifies the operating conditions to be monitored and the records to be maintained in accordance with 40 CFR §60.49b(c). The request for plan approval shall be contained in the permit application or consent order required under subsection 6.6;

6.4.c. Operate and maintain the compliance PEMS on a continuous basis in accordance with 40 CFR §60.46b and the compliance PEMS requirements provided in Performance Specification 16 in Appendix B to 40 CFR part 60;

6.4.d. Comply with the continuous monitoring requirements of 40 CFR §§60.48b and 60.13;

6.4.e. For each month of the ozone season:

6.4.e.1. Determine total monthly heat input (in mmBtu) using fuel flowmeters and measurements or records of fuel gross calorific value, or in instances where fuel flow is not metered determine total monthly heat input (in mmBtu) from other measurements and records; and

6.4.e.2. Calculate total monthly NO_x mass emissions (in tons) by multiplying the total monthly heat input by the 30-day rolling average NO_x emission rate (in lb/mmBtu) determined under subdivisions 6.4.c and 6.4.d for the last day of the month on which the unit operated and divide by 2000;

6.4.f. Determine the total NO_x mass emissions for the ozone season (in tons) by summing the amounts of total monthly NO_x mass emissions calculated under subdivision 6.4.e for each month of the ozone season; and

6.4.g. Comply with the following reporting and recordkeeping requirements:

6.4.g.1. Maintain records in accordance with 40 CFR §60.49b and all additional records necessary to support the heat input data, 30-day rolling average NO_x emission rate data, and NO_x mass emissions computations described in subdivisions 6.4.e and 6.4.f; and

6.4.g.2. Submit to the Secretary reports in accordance with 40 CFR §60.49b and include the total monthly heat input data, 30-day rolling average NO_x emission rate data, and monthly and ozone season NO_x mass emissions computations described in subdivisions 6.4.e and 6.4.f.

6.5. An owner or operator of a combustion turbine unit that elects to demonstrate compliance using a CEMS shall meet the following requirements:

6.5.a. Install and certify the CEMS in accordance with Performance Specification 2 in Appendix B to 40 CFR part 60 and 45CSR16;

6.5.b. Conduct the performance tests in accordance with 40 CFR §60.4400;

6.5.c. Operate and maintain the CEMS in accordance with 40 CFR §60.4345 on a continuous basis;

6.5.d. Collect all CEMS data in accordance with 40 CFR §60.4350;

6.5.e. For each month of the ozone season:

6.5.e.1. Determine total monthly heat input (in mmBtu) using fuel flowmeters and measurements or records of fuel gross calorific value, or in instances where fuel flow is not metered determine total monthly heat input (in mmBtu) from other measurements and records; and

6.5.e.2. Calculate total monthly NO_x mass emissions (in tons) by multiplying the total monthly heat input by the 30-day rolling average NO_x emission rate (in lb/mmBtu) determined under subdivisions 6.5.c and 6.5.d for the last day of the month on which the unit operated and divide by 2000;

6.5.f. Determine the total NO_x mass emissions for the ozone season (in tons) by summing the amounts of total monthly NO_x mass emissions calculated under subdivision 6.5.e for each month of the ozone season; and

6.5.g. Comply with the following reporting and recordkeeping requirements:

6.5.g.1. Maintain records in accordance with 40 CFR §60.49b and all additional records necessary to support the heat input data, 30-day rolling average NO_x emission rate data, and NO_x mass emissions computations described in subdivisions 6.5.e and 6.5.f; and

6.4.g.2. Submit to the Secretary reports in accordance with 40 CFR §60.49b and include the total monthly heat input data, 30-day rolling average NO_x emission rate data, and monthly and ozone season NO_x mass emissions computations described in subdivisions 6.5.e and 6.5.f.

6.6. An owner or operator that elects an alternative monitoring scenario that is not currently contained in a permit issued pursuant to 45CSR13, 45CSR14 or 45CSR19 or via a consent order shall:

6.6.a. Submit a request for the alternative monitoring scenario in a permit application in accordance with 45CSR13, 45CSR14 or 45CSR19. For compliance options provided in 6.3, 6.4 or 6.5, the permit application should identify how NO_x emissions (in tons) will be determined using the CEMS or PEMS data; and.

6.6.b. Obtain approval from the Secretary via a permit issued under 45CSR13, 45CSR14 or 45CSR19 or via a consent order, effective prior to the start of the ozone season.

6.7. An owner or operator electing to demonstrate compliance with 40 CFR part 75, subpart H shall not use any alternative monitoring system, alternative reference method, or any other alternative for the requirements under 40 CFR part 75, subpart H prior to obtaining written approval by the Administrator in accordance with 40 CFR §75.70(h).

6.8. An owner or operator required to demonstrate compliance with a NO_x emissions limit under 40 CFR part 60, subpart Db shall not use an alternative monitoring system, reference method, or other CEMS requirements alternative under 40 CFR part 60, subpart Db prior to obtaining written approval by the Administrator.

6.9. The owner or operator of an applicable unit under subsection 4.1 may demonstrate compliance with the NO_x ozone season emission limitation set forth in section 5 in accordance with an alternative monitoring system under 40 CFR part 60, subpart Db without obtaining approval of the Secretary, provided the owner or operator obtained written approval from the Administrator prior to the effective date of this rule.

§45-40-7. Violation.

7.1. The owner or operator of an applicable unit under subsection 4.1 shall be subject to enforcement pursuant to W.Va. Code §22-5-1 et seq. or the CAA for excess emissions of NO_x during an ozone season if the unit emitted nitrogen oxides in excess of its ozone season NO_x emission limitation set forth in section 5.

§45-40-8. Ozone season NO_x budget demonstration.

8.1. Ozone season NO_x budget. -- The ozone season NO_x budget for all units that meet the applicability requirements set forth in subsection 4.1 is 2,184 tons.

8.2. Ozone season NO_x budget demonstration. -- Through the imposition of ozone season NO_x limitations under section 5, and assumption of maximum operating capacity or use of a limitation on operating time for a unit during the ozone season, the Secretary shall demonstrate to the Administrator that the ozone season NO_x emissions from all applicable units under subsection 4.1 meets the ozone season NO_x budget for these units set forth in subsection 8.1.

8.3. New units. -- The Secretary shall revise the ozone season NO_x budget demonstration under subsection 8.2 to accommodate the ozone season NO_x emissions of any new unit that meets the applicability requirements set forth in subsection 4.1. The ozone season NO_x emissions from any such new unit shall not cause the ozone season NO_x budget set forth in subsection 8.1 to be exceeded.

§45-40-9. Ozone season NO_x reduction requirements for stationary internal combustion engines.

9.1. Ozone season NO_x reduction. -- Effective May 1, 2009, the following owners or operators must reduce ozone season NO_x emissions by an amount equal to or greater than the applicable ozone season NO_x reduction listed in the table below. The applicable ozone season NO_x reduction is binding on the listed owners or operators, their successors and assigns:

Company	Ozone Season NO _x Reduction
Dominion	668 tons
Columbia Gas Transmission	235 tons
Total	903 tons

9.2. Compliance plan. -- Effective May 1, 2009, an owner or operator of a large stationary internal combustion engine under subsection 4.2 must not operate such engine in the period May 1 through September 30 of 2009 and any subsequent year unless the owner or operator demonstrates the applicable ozone season NO_x reduction under subsection 9.1 through the requirements of an approved compliance plan. The compliance plan shall meet the following provisions:

9.2.a. Reserved;

9.2.b. Reserved;

9.2.c. The compliance plan must demonstrate quantifiable and enforceable NO_x emission reductions equal to or greater than the applicable ozone season NO_x reduction set forth in subsection 9.1, taking into account any creditable reduction in NO_x emissions under subdivisions 9.2.e, 9.2.f, 9.2.g, 9.2.h or 9.2.i;

9.2.d. The compliance plan may include and affect some or all stationary internal combustion engines or other significant NO_x emitting equipment at an individual facility, at several facilities, or at all facilities in West Virginia that are controlled by the same owner or operator;

9.2.e. The compliance plan may include credit for reductions in NO_x emissions due to the installation and operation of NO_x control equipment on large stationary internal combustion engines under subsection 9.1. The owner or operator will demonstrate to the satisfaction of the Secretary any creditable reductions in NO_x emissions from the installation and operation of such NO_x control equipment. The credit for reductions in NO_x emissions must be quantified based on the difference between uncontrolled and controlled NO_x emission rates, and ozone season operating hours;

9.2.f. The compliance plan may include credit for reductions in NO_x emissions due to the installation and operation of NO_x control equipment on uncontrolled stationary internal combustion engines not under subsection 4.2. The owner or operator will demonstrate to the satisfaction of the Secretary any creditable reductions in NO_x emissions from the installation and operation of such NO_x control equipment. Creditable reductions must be limited to reductions achieved after 1995 and from controls that were not part of the NO_x SIP Call engine inventory. The credit for reductions in NO_x emissions must be quantified based on the difference between uncontrolled and controlled NO_x emission rates, and ozone season operating hours;

9.2.g. The compliance plan may include credit for reductions in NO_x emissions due to replacement of any stationary internal combustion engines or other significant NO_x emitting equipment. The owner or operator will demonstrate to the satisfaction of the Secretary that the historic ozone season load capacity of any stationary internal combustion engine or other significant NO_x emitting equipment no longer in operation has been or would be replaced by one or more new stationary internal combustion engines, electric motors or turbines during each ozone season. The credit for reductions in NO_x emissions must be quantified based on the replaced engine's or other significant NO_x emitting equipment's ozone season NO_x emission rate and ozone season operating hours, and the projected emission rate and ozone season operating hours of any new replacement stationary internal combustion engines, electric motors or turbines;

9.2.h. The compliance plan may include credit for reductions in NO_x emissions due to reductions from shifting historic load capacity from an uncontrolled engine to a controlled engine, electric motor or turbine. The owner or operator will demonstrate to the satisfaction of the Secretary that a quantifiable net reduction in NO_x emissions has occurred or will occur due to a direct shift of ozone season load capacity from an uncontrolled engine to a controlled engine, electric motor or turbine. The credit for reductions in NO_x emissions must be quantified based on the uncontrolled engine's historic ozone season load capacity, NO_x emission rate (in g/bhp-hr), ozone season operating hours (in hr/ozone season), and the shifted ozone season load capacity, NO_x emission rate (in g/bhp-hr) and ozone season operating hours (in hr/ozone season) of the controlled stationary internal combustion engine, electric motor or turbine;

9.2.i. The compliance plan may include credit for reductions in NO_x emissions due to the installation and operation of NO_x controls on significant NO_x emitting equipment other than stationary internal combustion engines. The owner or operator will demonstrate to the satisfaction of the Secretary any creditable reductions in NO_x emissions from such NO_x emitting equipment. Creditable reductions must be limited to reductions achieved after 1995 and from controls that were not part of the NO_x SIP Call inventory. The credit for reductions in NO_x emissions must be quantified based on the difference between NO_x emission rates prior to installation of controls and controlled NO_x emission rates, and ozone season operating hours;

9.2.j. The compliance plan must include the following:

9.2.j.1. A list of affected engines or affected NO_x emitting equipment subject to the plan, including the manufacturer, model number, facility location and facility identification number;

9.2.j.2. The projected ozone season hours of operation for each affected engine or affected NO_x emitting equipment and supporting documentation;

9.2.j.3. A description of the NO_x emission controls installed, or to be installed, on each affected engine or affected NO_x emitting equipment, date or proposed date of installation, and documentation to support the controlled NO_x emission rates;

9.2.j.4. The uncontrolled and controlled NO_x emission rates in lb/hr and tons per ozone season for each affected engine or affected NO_x emitting equipment, as applicable;

9.2.j.5. A numerical demonstration that the sum of creditable NO_x emission reductions (in tons) obtained from all affected engines or affected NO_x emitting equipment included under a compliance plan will be equivalent to or greater than the owner or operator's applicable ozone season NO_x reduction under subsection 9.1, taking into account any creditable reductions in NO_x emissions under subdivisions 9.2.e, 9.2.f, 9.2.g, 9.2.h or 9.2.i; and

9.2.j.6. Performance test protocol and provisions for periodic monitoring, reporting and recordkeeping for each affected engine or affected NO_x emitting equipment.

9.2.k. Any creditable reductions in NO_x emissions under subdivisions 9.2.e, 9.2.f, 9.2.g, 9.2.h or 9.2.i must be quantifiable and enforceable through limitations included in a federally enforceable permit or compliance order; and

9.2.l. Any owner or operator with an approved compliance plan under subsection 9.2 may amend the plan with the written approval of the Secretary. Any NO_x emission rate or limitation included in such an amendment must be reflected in a federally enforceable permit or compliance order. The Secretary will either approve by order or disapprove ~~by certified mail in writing~~ the amended compliance plan within 90 days of submission, and notify the Administrator of the compliance plan amendment approval upon issuance of order.

9.3. Monitoring requirements. -- Any owner or operator of an affected engine or affected NO_x emitting equipment subject to a compliance plan under subsection 9.2 must comply with the following monitoring requirements for each affected engine or affected NO_x emitting equipment:

9.3.a. The owner or operator must complete an initial performance test consistent with the requirements of 40 CFR part 60, Appendix A and 45CSR16, following installation of NO_x emission controls required to achieve the NO_x emission rate limit specified in subdivision 9.2.k; and

9.3.b. For the ozone season beginning in 2009, and each ozone season thereafter, the owner or operator will perform periodic monitoring sufficient to yield reliable data which demonstrate compliance with the limitations specified in subdivision 9.2.k. Such periodic monitoring must include:

9.3.b.1. A continuous emission monitoring system that complies with 40 CFR part 75 or 40 CFR part 60 and 45CSR16 and the quality assurance procedures specified in 40 CFR part 60, Appendix F and 45CSR16; or

9.3.b.2. Performance tests consistent with the requirements of 40 CFR part 60, Appendix A and 45CSR16, or portable monitors using ASTM D6522-00; and

9.3.b.2.A. A parametric monitoring program that specifies operating parameters, and their ranges, that will provide reasonable assurance that each affected engine or affected NO_x emitting equipment's emissions are consistent with the requirements of a compliance plan under subsection 9.2. Any such parametric monitoring program must be approved by the Secretary; or

9.3.b.2.B. A predictive emissions measurement system that relies on automated data collection from instruments. Any such predictive emissions measurement system must be approved by the Secretary.

9.4. Recordkeeping requirements. -- Any owner or operator of an affected engine or affected NO_x emitting equipment subject to a compliance plan under subsection 9.2 must comply with the following recordkeeping requirements:

9.4.a. Maintain all records necessary to demonstrate compliance with the requirements of the compliance plan and subsection 9.4 for a period of five calendar years at the facility where an affected engine or affected NO_x emitting equipment is located. Such records will be made available to the Secretary or Administrator upon request; and

9.4.b. For each affected engine or affected NO_x emitting equipment subject to a compliance plan under subsection 9.2, the owner or operator will maintain records of:

9.4.b.1. Identification and location of each affected engine or affected NO_x emitting equipment;

9.4.b.2. Calendar date of record;

9.4.b.3. The number of hours the affected engine or affected NO_x emitting equipment is operated during each ozone season compared to projected operating hours;

9.4.b.4. Type and quantity of fuel combusted; and

9.4.b.5. The results of all compliance tests.

9.5. Reporting requirements. -- Any owner or operator of an affected engine or affected NO_x emitting equipment subject to a compliance plan under subsection 9.2 must:

9.5.a. Notify the Secretary of any performance test under paragraph 9.3.b.2 at least 15 days in advance of such test;

9.5.b. Submit results of all performance tests to the Secretary within 30 days of completion of such tests; and

9.5.c. Submit a report which documents the total ozone season NO_x emissions and certifies compliance with the compliance plan for each affected engine or affected NO_x emitting equipment to the Secretary by October 31 of each year, beginning in 2009. The report must demonstrate and certify compliance with the applicable ozone season NO_x reduction set forth in subsection 9.1.

§45-40-10. Ozone season NO_x reduction requirements for emissions of NO_x from cement manufacturing kilns.

10.1. Standard requirements. -- Effective May 1, 2009, an owner or operator of any Portland cement kiln subject to this section must not operate the kiln during May 1 through September 30 unless the kiln has installed and operates during May 1 to September 30 with low-NO_x burners, mid-kiln firing or alternative control techniques, subject to approval by the Administrator, that achieve at least the same emissions decreases as low-NO_x burners or mid-kiln firing.

10.2. NO_x compliance plan. -- Any owner or operator of a source subject to the standard requirements of subsection 10.1 may elect to use NO_x reductions from any non-affected kiln at a source with a Portland cement kiln under subsection 4.3. If the owner or operator so elects, he or she must submit for approval to the Administrator by May 1, 2009, a NO_x compliance plan which demonstrates the method(s) by which the operator will achieve NO_x reductions from non-affected kilns which achieve at least the same emissions decreases set forth in the standard requirements of subsection 10.1.

10.3. Reporting requirements. -- Any owner or operator subject to the standard requirements of subsection 10.1 must comply with the following reporting requirements:

10.3.a. By May 1, 2009, submit to the Secretary and Administrator the identification number and type of each kiln subject to this section, the name and address of the plant where the kiln is located and the name and telephone number of the person responsible for demonstrating compliance with this section; and

10.3.b. Submit a report documenting for that kiln the total NO_x emissions from May 1 through September 30 of each year to the Secretary and Administrator by October 31 of each year, beginning in 2009.

10.4. Monitoring requirements.

10.4.a. Any owner or operator of a kiln subject to this section must complete an initial performance test and subsequent annual testing consistent with the requirements of 40 CFR part 60,

Appendix A, Method 7, 7A, 7C, 7D or 7E; and 45CSR16; and

10.4.b. The operator may use the results of continuous emission monitoring system (CEMS) to replace the annual testing requirements set forth in subdivision 10.4.a. Such equipment must be installed and operated consistent with 40 CFR part 75.

10.5. Recordkeeping requirements. -- Any owner or operator of a kiln subject to this section must produce and maintain records which include, but are not limited to:

10.5.a. The emissions, in pounds of NO_x per ton of clinker produced from each affected Portland cement kiln;

10.5.b. The type of control used for each affected Portland cement kiln;

10.5.c. The date, time and duration of any startup, shutdown or malfunction in the operation of any of the cement kilns or the emissions monitoring equipment;

10.5.d. The results of any performance testing;

10.5.e. Daily cement kiln production records; and

10.5.f. All records required to be produced or maintained will be retained on site for a minimum of 5 years and be made available to the Secretary or Administrator upon request.

~~§45-40-11.~~ Inconsistency between rules.

11.1. In the event of any inconsistency between this rule and any other rule of the Division of Air Quality, the inconsistency will be resolved by the determination of the Secretary and the determination will be based upon the application of the more stringent provision, term, condition, method or rule.

45CSR40

NOTICE OF ACTION TAKEN by

LEGISLATIVE RULEMAKING REVIEW COMMITTEE

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WEST VIRGINIA LEGISLATURE

Legislative Rule-Making Review Committee

FILED

2022 SEP 16 A 8:33

Senator Dave Syppolt, Co-Chair
Delegate Geoff Foster, Co-Chair

OFFICE OF THE WEST VIRGINIA
SECRETARY OF STATE
Adair Sankoff, Director

September 11, 2022

NOTICE OF ACTION TAKEN BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

To: Mac Warner, Secretary of State, State Register
To: Sandra Adkins
DEP - Air Quality
WV Department of Environmental Protection, DAQ
601 57th Street, SE
Charleston, WV 25304
From: Legislative Rule-Making Review Committee
Proposed Rule: Control of Ozone Season Nitrogen Oxides Emissions, 45-40

The Legislative Rule-Making Review Committee Recommends that the West Virginia Legislature

1. Authorize the agency to promulgate the Legislative rule:
 - (A) as originally filed
 - (B) as modified by the agency
2. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.
3. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached.
4. Recommends that the Legislative rule be withdrawn; a statement of reasons for the recommendation is attached.
5. Recommends that the Legislative rule be rejected; a statement of reasons for the recommendation is attached.

X

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45CSR40

NOTICE AND FILING OF

AGENCY APPROVAL OF A PROPOSED RULE

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WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

eFILED

7/21/2022 1:44:26 PM

Office of West Virginia
Secretary Of State

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

AGENCY: Air Quality TITLE-SERIES: 45-40
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: 45-40 Control of Ozone Season Nitrogen Oxides Emissions

PRIMARY CONTACT

NAME: Laura Jennings
ADDRESS: WV Department Of Environmental Protection Daq
601 57th Street Se
Charleston, WV 25304
EMAIL: laura.m.jennings@wv.gov
PHONE NUMBER: 304-926-0475

CITE STATUTORY AUTHORITY: W. Va. Code § 22-5-4

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

W. Va. Code § 22-5-4(a)(4) authorizes the director to promulgate legislative rules relating to the control of air pollution.

This rule establishes nitrogen oxides (NOx) ozone season limitations and requirements for large industrial boilers and combustion turbines that have a maximum design heat input greater than 250 mmBTU/hr, in accordance with 40 CFR §51.121; affected stationary internal combustion engines; and applicable cement manufacturing kilns.

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/1/2022

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/5/2022

COMMENTS RECEIVED: Yes

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: Yes

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: Yes

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

Legal advertisement of public notice published 6/3/22 in the Charleston Newspapers
Public notice published 6/3/22 in the WV State Register
Notice posted on the Department of Environmental Protection website <https://dep.wv.gov/pio/Pages/Rules.aspx>
Notice posted on the Division of Air Quality website
<https://dep.wv.gov/daq/publicnoticeandcomment/Pages/default.aspx>
Public notice sent to the DEP email list 6/3/22

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

This rule establishes: (a) ozone season nitrogen oxides (NOx) emissions limitations, monitoring, recordkeeping, reporting, excess emissions, and NOx budget demonstration requirements for large industrial boilers and combustion turbines that have a maximum design heat input greater than 250 mmBTU/hr, in accordance with 40 CFR §51.121; (b) ozone season NOx reduction, compliance plan, monitoring, recordkeeping and reporting requirements for affected stationary internal combustion engines; and (c) ozone season NOx control standards, ozone season NOx compliance plan, monitoring, recordkeeping, and reporting requirements for applicable cement manufacturing kilns.

Section 4.1 of the rule was revised to update the characterization of units that are not subject to this rule because they are subject to a federal NOx ozone season trading program.

9.2.1 - replaced certified mail with in writing.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

This rule is exempt from the Regulatory Moratorium of Executive Order 2-18 under condition 3(g), updating state rules to comply with federal law requirements.

The federal trading program that is referenced to define applicability to this rule was revised and therefore the reference to it requires revision.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

The proposed revision to this rule should not impact revenues of state government.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

The proposed revisions to this rule should not impact special revenue accounts.

C. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

The proposed revision to this rule should not have any additional impact on the cost of state government beyond that resulting from currently applicable federal requirements, nor should it have an economic impact on the state or its residents.

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2022 Increase/Decrease (use "-")	2023 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

The revision to this rule is not expected to impact costs and revenues of state government.

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

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Jason E Wandling -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 45
LEGISLATIVE RULE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
AIR QUALITY

SERIES 40
CONTROL OF OZONE SEASON NITROGEN OXIDES EMISSIONS

§45-40-1. General.

1.1. Scope. -- This rule establishes:

1.1.a. Ozone season NO_x emission limitation, monitoring, recordkeeping, reporting, excess emissions, and NO_x budget demonstration requirements for large industrial boilers and combustion turbines that have a maximum design heat input greater than 250 mmBTU/hr, in accordance with 40 CFR §51.121;

1.1.b. Ozone season NO_x reduction, compliance plan, monitoring, recordkeeping and reporting requirements for affected stationary internal combustion engines; and

1.1.c. Ozone season NO_x control standards, ozone season NO_x compliance plan, reporting, monitoring and recordkeeping requirements for applicable cement manufacturing kilns.

1.2. Authority. -- W.Va. Code §22-5-4.

1.3. Filing Date. -- ~~June 1, 2020.~~

1.4. Effective Date. -- ~~June 1, 2020.~~

1.5. Sunset Provision. -- Exempt.

§45-40-2. Definitions.

2.1. “Administrator” means the Administrator of the United States Environmental Protection Agency (U.S. EPA) or the Administrator’s duly authorized representative.

2.2. “Boiler” means an enclosed fossil or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

2.3. “Clean Air Act” or “CAA” means the Clean Air Act, 42 U.S.C. 7401, et seq., as amended.

2.4. “Clinker” means the product of a Portland cement kiln from which finished cement is manufactured by milling and grinding.

2.5. “Combustion turbine” means:

2.5.a. An enclosed device comprising a compressor, a combustor, and a turbine and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine; and

2.5.b. If the enclosed device under subdivision 2.6.a is combined cycle, any associated duct burner, heat recovery steam generator, and steam turbine.

2.6. “Continuous emission monitoring system” or “CEMS” means, except for purposes of subsections

2.15 and 6.2, the total equipment required for the determination of NO_x emission rate, expressed in pounds per million British thermal units (lb/mmBtu). For the purposes of this rule, CEMS is used for continuous compliance determinations. The sample interface, pollutant analyzer, diluent analyzer, and data recorder are the major subsystems of the CEMS. The principal type of continuous emission monitoring system is:

2.6.a. A nitrogen oxides emission rate (or NO_x-diluent) monitoring system, consisting of a NO_x pollutant concentration monitor, a diluent gas (CO₂ or O₂) monitor, and an automated data acquisition and handling system and providing a permanent, continuous record of NO_x concentration, in parts per million (ppm), diluent gas concentration, in percent CO₂ or O₂; and NO_x emission rate, in pounds per million British thermal units (lb/mmBtu);

2.7. "Excess emissions" means nitrogen oxides emitted by an applicable unit under subsection 4.1 during an ozone season that exceeds the ozone season NO_x emissions limitation for the unit set forth in section 5.

2.8. "Fossil fuel" means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

2.9. "Fossil fuel-fired" means, with regard to a unit, and solely for purposes of applying the applicability provisions in subsection 4.1:

2.9.a. The combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than 50 percent of the annual heat input on a Btu basis during any year; or

2.9.b. The combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel is projected to comprise more than 50 percent of the annual heat input on a Btu basis during any year; provided that the unit shall be "fossil fuel-fired" as of the date, during such year, on which the unit begins combusting fossil fuel.

2.10. "Large NO_x SIP call engine" means a stationary internal combustion engine identified and designated as "large" in the NO_x SIP Call Engine Inventory as emitting more than one ton of NO_x per average ozone season day in 1995.

2.11. "Long dry kiln" means a kiln 14 feet or larger in diameter, 400 feet or greater in length, which employs no preheating of the feed. The inlet feed to the kiln is dry.

2.12. "Long wet kiln" means a kiln 14 feet or larger in diameter, 400 feet or greater in length, which employs no preheating of the feed. The inlet feed to the kiln is a slurry.

2.13. "Low-NO_x burners" means combustion equipment designed to reduce flame turbulence, delay fuel/air mixing and establish fuel-rich zones for initial combustion.

2.14. "Mid-kiln firing" means the secondary firing in kilns by injecting solid fuel at an intermediate point in the kiln using a specially designed feed injection mechanism for the purpose of decreasing NO_x emissions through:

2.14.a. Burning part of the fuel at a lower temperature; and

2.14.b. Reducing conditions at the solid waste injection point that may destroy some of the NO_x formed upstream in the kiln burning zone.

2.15. "Monitoring system" means, for purposes of subsection 6.2, a continuous emissions monitoring system, an alternative monitoring system, or an excepted monitoring system under 40 CFR part 75 as defined in 40 CFR §72.2.

2.16. “Nitrogen oxides” or “NO_x” means all oxides of nitrogen except nitrous oxide (N₂O), reported on an equivalent molecular weight basis as nitrogen dioxide (NO₂).

2.17. “NO_x SIP Call Engine Inventory” means the inventory of internal combustion engines compiled by U.S. EPA as part of the NO_x SIP Call Rule, including the technical amendments, announced in the March 2, 2000 Federal Register, page 11222, and the adjustment of the 2007 Budget NO_x Control Efficiency to 82 percent for large gas-fired engines, announced in the April 21, 2004 Federal Register notice, page 21604 for the Phase II NO_x SIP Call Rule.

2.18. “Ozone season” means the period beginning May 1 of a calendar year, and ending on September 30 of the same year, inclusive.

2.19. “Performance Specification 2” or “PS 2” means the Specifications and Test Procedures for SO₂ and NO_x Continuous Emission Monitoring Systems in Stationary Sources provided in Appendix B to 40 CFR part 60. For purposes of subsections 6.3 and 6.5, these procedures are used for measuring CEMS relative accuracy and calibration drift and include CEMS installation and measurement location specifications, equipment specifications, performance specifications, and data reduction.

2.20. “Performance Specification 16” or “PS 16” means the Specifications and Test Procedures for Predictive Emission Monitoring Systems (PEMS) in Stationary Sources provided in Appendix B to 40 CFR part 60. For purposes of subsection 6.4, these procedures are used to determine whether the PEMS is acceptable for use in demonstrating compliance with the NO_x emission limit and to certify the PEMS initially. They are also used periodically thereafter to ensure the PEMS is operating properly. These specifications apply to PEMS that are installed on or after April 24, 2009.

2.21. “Predictive Emission Monitoring System” or “PEMS” means all of the equipment required to predict an emission concentration or emission rate. The system may consist of any of the following major subsystems: sensors and sensor interfaces, emission model, algorithm, or equation that uses process data to generate an output that is proportional to the emission concentration or emission rate, diluent emission model, data recorder, and sensor evaluation system. Systems that use fewer than three (3) variables do not qualify as PEMS unless the system has been specifically approved by the Administrator for use as a PEMS. A PEMS may predict emissions data that are corrected for diluent if the relative accuracy and relevant QA tests are passed in the emission units corrected for diluent. Parametric monitoring systems that serve as indicators of compliance and have parametric limits but do not predict emissions to comply with an emissions limit are not included in this definition.

2.22. “Portland cement” means a hydraulic cement produced by pulverizing clinker consisting essentially of hydraulic calcium silicates, usually containing one or more of the forms of calcium sulfate as an interground addition.

2.23. “Portland cement kiln” means a system, including any solid, gaseous or liquid fuel combustion equipment, used to calcine and fuse raw materials, including limestone and clay, to produce Portland cement clinker.

2.24. “Precalciner kiln” means a kiln where the feed to the kiln system is preheated in cyclone chambers and utilizes a second burner to calcine material in a separate vessel attached to the preheater prior to the final fusion in a kiln which forms clinker.

2.25. “Preheater kiln” means a kiln where the feed to the kiln system is preheated in cyclone chambers prior to the final fusion in a kiln which forms clinker.

2.26. “Secretary” means the Secretary of the Department of Environmental Protection or such other person to whom the Secretary has delegated authority or duties pursuant to W.Va. Code §§22-1-6 or 22-1-

8.

2.27. “Source” means all buildings, structures, or installations located in one or more contiguous or adjacent properties under common control of the same person or persons.

2.28. “Stationary internal combustion engine” or “engine” means any internal combustion engine of the reciprocating type that is either attached to a foundation at a facility or is designed to be capable of being carried or moved from one location to another and remains at a single site at a building, structure, facility, or installation for more than 12 consecutive months. Any engine (or engines) that replaces an engine at a site that is intended to perform the same or similar function as the engine replaced is included in calculating the consecutive time period.

2.29. “Ton” means 2,000 pounds.

2.30. “Unit” means a stationary fossil fuel-fired boiler, combustion turbine, or combined cycle system.

2.31. Other words and phrases used in this rule, unless otherwise indicated, will have the meaning ascribed to them in W.Va. Code §22-5-1 et seq. and 40 CFR §72.2.

§45-40-3. Measurements, abbreviations and acronyms.

3.1. Measurements, abbreviations and acronyms used in this rule are defined as follows:

- 3.1.a. Btu -- British thermal unit.
- 3.1.b. CEMS -- Continuous Emissions Monitoring System.
- 3.1.c. CO₂ -- carbon dioxide.
- 3.1.d. CSAPR -- Cross-State Air Pollution Rule.
- 3.1.e. g/bhp-hr -- grams per brake horsepower hour.
- 3.1.f. Hr -- hour.
- 3.1.g. MmBtu -- million Btu.
- 3.1.h. NO_x -- nitrogen oxides.
- 3.1.i. O₂ -- oxygen.
- 3.1.j. PEMS -- Predictive Emission Monitoring System.
- 3.1.k. SO₂ -- sulfur dioxide.
- 3.1.l. Tph -- tons per hour.
- 3.1.m. Yr -- year.

§45-40-4. Applicability.

4.1. The owner or operator of a unit that has a maximum design heat input greater than 250 mmBtu/hr, except for any unit subject to ~~the federal Cross-State Air Pollution Rule (CSAPR) NO_x Ozone Season Group 2~~ a seasonal NO_x trading program established under 40 CFR part 97, ~~subpart EEEE, or an~~

~~equivalent trading program established under 45CSR43 and approved as a state implementation plan revision pursuant to 40 CFR §52.38(b)(9), in accordance with a federal implementation plan set forth in 40 CFR § 52.38(b) or subject to a seasonal NO_x trading program established under a SIP revision approved by the U.S. EPA as meeting the requirements of 40 CFR § 52.38(b).~~ shall comply with the ozone season NO_x emission limitation, and monitoring, recordkeeping and reporting requirements for ozone season emissions of NO_x set forth in sections 5 and 6 below.

4.2. Effective May 1, 2009, the owner or operator of a large NO_x SIP Call engine shall comply with the ozone season NO_x reduction, compliance plan, monitoring, recordkeeping and reporting requirements set forth in section 9 below.

4.3. Effective May 1, 2009, the owner or operator of a kiln that meets the following applicability requirements shall comply with the ozone season NO_x control standards, ozone season NO_x compliance plan, reporting, monitoring and recordkeeping requirements set forth in section 10 below:

- 4.3.a. Long dry kilns \geq 12 TPH process rate;
- 4.3.b. Long wet kilns \geq 10 TPH process rate;
- 4.3.c. Preheater kilns \geq 16 TPH process rate; and
- 4.3.d. Precalciner and preheater/precalciner kilns \geq 22 TPH process rate.

§45-40-5. Ozone season NO_x emission limitation.

5.1. Ozone season NO_x limitation. -- Beginning May 1, 2016, the owner or operator of a unit that meets the applicability requirements set forth in subsection 4.1 shall limit emissions of NO_x during an ozone season pursuant to a NO_x emission rate for each unit contained in a permit issued under 45CSR13, 45CSR14, 45CSR19 or via consent order issued by the Secretary in accordance with W.Va. Code §22-5-4(a)(5). Such ozone season NO_x limitation may also include a limitation on operating time for a unit during the ozone season.

§45-40-6. Monitoring, recordkeeping and reporting requirements.

6.1. The owner or operator of an applicable unit under subsection 4.1 shall comply with the provisions of 40 CFR part 75, subpart H (including use of any of the emissions monitoring methodologies which the unit qualifies to use under 40 CFR part 75) or shall install and operate a certified continuous emission monitoring system (CEMS) or a certified predictive emission monitoring system (PEMS) as necessary to attribute ozone season mass emissions of NO_x to each unit in accordance with subsection 6.2, 6.3, 6.4 or 6.5 below. Nitrogen oxides mass emissions measurements recorded and reported in accordance with subsection 6.2, 6.3, 6.4 or 6.5 shall be used to determine a unit's compliance with the ozone season NO_x emission limitation set forth in section 5.

6.2. An owner or operator that elects to demonstrate compliance in accordance with 40 CFR part 75, subpart H, shall meet the following requirements:

- 6.2.a. Install, calibrate, certify, maintain, monitor, and operate all required monitoring systems in accordance with 40 CFR part 75, subpart H;
- 6.2.b. Maintain records in accordance with 40 CFR part 75, subpart H ; and
- 6.2.c. Submit reports in accordance with 40 CFR part 75, subpart H.

6.3. An owner or operator that elects to demonstrate compliance using a CEMS in accordance with

40 CFR part 60, subpart Db and 45CSR16 shall meet the following requirements:

6.3.a. Install and certify the CEMS in accordance with Performance Specification 2 in Appendix B to 40 CFR part 60;

6.3.b. Operate and maintain the CEMS in accordance with 40 CFR §60.46b on a continuous basis;

6.3.c. Install, calibrate, maintain and operate the CEMS in accordance with the continuous monitoring requirements of:

6.3.c.1. 40 CFR §§60.48b and 60.13; or

6.3.c.2. 40 CFR §§60.47b(e) and 60.13;

6.3.d. For each month of the ozone season:

6.3.d.1. Determine total monthly heat input (in mmBtu) using fuel flowmeters and measurements or records of fuel gross calorific value, or in instances where fuel flow is not metered determine total monthly heat input (in mmBtu) from other measurements and records; and

6.3.d.2. Calculate total monthly NO_x mass emissions (in tons) by multiplying the total monthly heat input by the 30-day rolling average NO_x emission rate (in lb/mmBtu) determined under subdivisions 6.3.b and 6.3.c for the last day of the month on which the unit operated and divide by 2000;

6.3.e. Determine the total NO_x mass emissions for the ozone season (in tons) by summing the amounts of total monthly NO_x mass emissions calculated under subdivision 6.3.d for each month of the ozone season; and

6.3.f. Comply with the following reporting and recordkeeping requirements:

6.3.f.1. Maintain records in accordance with 40 CFR §60.49b and all additional records necessary to support the heat input data, 30-day rolling average NO_x emission rate data, and NO_x mass emissions computations described in subdivisions 6.3.d and 6.3.e; and

6.3.f.2. Submit to the Secretary reports in accordance with 40 CFR §60.49b and include the total monthly heat input data, 30-day rolling average NO_x emission rate data, and monthly and ozone season NO_x mass emissions computations described in subdivisions 6.3.d and 6.3.e.

6.4. An owner or operator not otherwise required to use a CEMS to demonstrate compliance with 40 CFR part 60 may elect to demonstrate compliance using a PEMS and shall meet the following requirements:

6.4.a. Install and certify the PEMS in accordance with Performance Specification 16 in Appendix B to 40 CFR part 60 and the Quality Assurance Procedures for compliance PEMS in Appendix F to 40 CFR part 60;

6.4.b. Submit to the Secretary for approval a plan that identifies the operating conditions to be monitored and the records to be maintained in accordance with 40 CFR §60.49b(c). The request for plan approval shall be contained in the permit application or consent order required under subsection 6.6;

6.4.c. Operate and maintain the compliance PEMS on a continuous basis in accordance with 40 CFR §60.46b and the compliance PEMS requirements provided in Performance Specification 16 in Appendix B to 40 CFR part 60;

6.4.d. Comply with the continuous monitoring requirements of 40 CFR §§60.48b and 60.13;

6.4.e. For each month of the ozone season:

6.4.e.1. Determine total monthly heat input (in mmBtu) using fuel flowmeters and measurements or records of fuel gross calorific value, or in instances where fuel flow is not metered determine total monthly heat input (in mmBtu) from other measurements and records; and

6.4.e.2. Calculate total monthly NO_x mass emissions (in tons) by multiplying the total monthly heat input by the 30-day rolling average NO_x emission rate (in lb/mmBtu) determined under subdivisions 6.4.c and 6.4.d for the last day of the month on which the unit operated and divide by 2000;

6.4.f. Determine the total NO_x mass emissions for the ozone season (in tons) by summing the amounts of total monthly NO_x mass emissions calculated under subdivision 6.4.e for each month of the ozone season; and

6.4.g. Comply with the following reporting and recordkeeping requirements:

6.4.g.1. Maintain records in accordance with 40 CFR §60.49b and all additional records necessary to support the heat input data, 30-day rolling average NO_x emission rate data, and NO_x mass emissions computations described in subdivisions 6.4.e and 6.4.f; and

6.4.g.2. Submit to the Secretary reports in accordance with 40 CFR §60.49b and include the total monthly heat input data, 30-day rolling average NO_x emission rate data, and monthly and ozone season NO_x mass emissions computations described in subdivisions 6.4.e and 6.4.f.

6.5. An owner or operator of a combustion turbine unit that elects to demonstrate compliance using a CEMS shall meet the following requirements:

6.5.a. Install and certify the CEMS in accordance with Performance Specification 2 in Appendix B to 40 CFR part 60 and 45CSR16;

6.5.b. Conduct the performance tests in accordance with 40 CFR §60.4400;

6.5.c. Operate and maintain the CEMS in accordance with 40 CFR §60.4345 on a continuous basis;

6.5.d. Collect all CEMS data in accordance with 40 CFR §60.4350;

6.5.e. For each month of the ozone season:

6.5.e.1. Determine total monthly heat input (in mmBtu) using fuel flowmeters and measurements or records of fuel gross calorific value, or in instances where fuel flow is not metered determine total monthly heat input (in mmBtu) from other measurements and records; and

6.5.e.2. Calculate total monthly NO_x mass emissions (in tons) by multiplying the total monthly heat input by the 30-day rolling average NO_x emission rate (in lb/mmBtu) determined under subdivisions 6.5.c and 6.5.d for the last day of the month on which the unit operated and divide by 2000;

6.5.f. Determine the total NO_x mass emissions for the ozone season (in tons) by summing the amounts of total monthly NO_x mass emissions calculated under subdivision 6.5.e for each month of the ozone season; and

6.5.g. Comply with the following reporting and recordkeeping requirements:

6.5.g.1. Maintain records in accordance with 40 CFR §60.49b and all additional records necessary to support the heat input data, 30-day rolling average NO_x emission rate data, and NO_x mass emissions computations described in subdivisions 6.5.e and 6.5.f; and

6.4.g.2. Submit to the Secretary reports in accordance with 40 CFR §60.49b and include the total monthly heat input data, 30-day rolling average NO_x emission rate data, and monthly and ozone season NO_x mass emissions computations described in subdivisions 6.5.e and 6.5.f.

6.6. An owner or operator that elects an alternative monitoring scenario that is not currently contained in a permit issued pursuant to 45CSR13, 45CSR14 or 45CSR19 or via a consent order shall:

6.6.a. Submit a request for the alternative monitoring scenario in a permit application in accordance with 45CSR13, 45CSR14 or 45CSR19. For compliance options provided in 6.3, 6.4 or 6.5, the permit application should identify how NO_x emissions (in tons) will be determined using the CEMS or PEMS data; and.

6.6.b. Obtain approval from the Secretary via a permit issued under 45CSR13, 45CSR14 or 45CSR19 or via a consent order, effective prior to the start of the ozone season.

6.7. An owner or operator electing to demonstrate compliance with 40 CFR part 75, subpart H shall not use any alternative monitoring system, alternative reference method, or any other alternative for the requirements under 40 CFR part 75, subpart H prior to obtaining written approval by the Administrator in accordance with 40 CFR §75.70(h).

6.8. An owner or operator required to demonstrate compliance with a NO_x emissions limit under 40 CFR part 60, subpart Db shall not use an alternative monitoring system, reference method, or other CEMS requirements alternative under 40 CFR part 60, subpart Db prior to obtaining written approval by the Administrator.

6.9. The owner or operator of an applicable unit under subsection 4.1 may demonstrate compliance with the NO_x ozone season emission limitation set forth in section 5 in accordance with an alternative monitoring system under 40 CFR part 60, subpart Db without obtaining approval of the Secretary, provided the owner or operator obtained written approval from the Administrator prior to the effective date of this rule.

§45-40-7. Violation.

7.1. The owner or operator of an applicable unit under subsection 4.1 shall be subject to enforcement pursuant to W.Va. Code §22-5-1 et seq. or the CAA for excess emissions of NO_x during an ozone season if the unit emitted nitrogen oxides in excess of its ozone season NO_x emission limitation set forth in section 5.

§45-40-8. Ozone season NO_x budget demonstration.

8.1. Ozone season NO_x budget. -- The ozone season NO_x budget for all units that meet the applicability requirements set forth in subsection 4.1 is 2,184 tons.

8.2. Ozone season NO_x budget demonstration. -- Through the imposition of ozone season NO_x limitations under section 5, and assumption of maximum operating capacity or use of a limitation on operating time for a unit during the ozone season, the Secretary shall demonstrate to the Administrator that the ozone season NO_x emissions from all applicable units under subsection 4.1 meets the ozone season NO_x budget for these units set forth in subsection 8.1.

8.3. New units. -- The Secretary shall revise the ozone season NO_x budget demonstration under

subsection 8.2 to accommodate the ozone season NO_x emissions of any new unit that meets the applicability requirements set forth in subsection 4.1. The ozone season NO_x emissions from any such new unit shall not cause the ozone season NO_x budget set forth in subsection 8.1 to be exceeded.

§45-40-9. Ozone season NO_x reduction requirements for stationary internal combustion engines.

9.1. Ozone season NO_x reduction. -- Effective May 1, 2009, the following owners or operators must reduce ozone season NO_x emissions by an amount equal to or greater than the applicable ozone season NO_x reduction listed in the table below. The applicable ozone season NO_x reduction is binding on the listed owners or operators, their successors and assigns:

Company	Ozone Season NO _x Reduction
Dominion	668 tons
Columbia Gas Transmission	235 tons
Total	903 tons

9.2. Compliance plan. -- Effective May 1, 2009, an owner or operator of a large stationary internal combustion engine under subsection 4.2 must not operate such engine in the period May 1 through September 30 of 2009 and any subsequent year unless the owner or operator demonstrates the applicable ozone season NO_x reduction under subsection 9.1 through the requirements of an approved compliance plan. The compliance plan shall meet the following provisions:

9.2.a. Reserved;

9.2.b. Reserved;

9.2.c. The compliance plan must demonstrate quantifiable and enforceable NO_x emission reductions equal to or greater than the applicable ozone season NO_x reduction set forth in subsection 9.1, taking into account any creditable reduction in NO_x emissions under subdivisions 9.2.e, 9.2.f, 9.2.g, 9.2.h or 9.2.i;

9.2.d. The compliance plan may include and affect some or all stationary internal combustion engines or other significant NO_x emitting equipment at an individual facility, at several facilities, or at all facilities in West Virginia that are controlled by the same owner or operator;

9.2.e. The compliance plan may include credit for reductions in NO_x emissions due to the installation and operation of NO_x control equipment on large stationary internal combustion engines under subsection 9.1. The owner or operator will demonstrate to the satisfaction of the Secretary any creditable reductions in NO_x emissions from the installation and operation of such NO_x control equipment. The credit for reductions in NO_x emissions must be quantified based on the difference between uncontrolled and controlled NO_x emission rates, and ozone season operating hours;

9.2.f. The compliance plan may include credit for reductions in NO_x emissions due to the installation and operation of NO_x control equipment on uncontrolled stationary internal combustion engines not under subsection 4.2. The owner or operator will demonstrate to the satisfaction of the Secretary any creditable reductions in NO_x emissions from the installation and operation of such NO_x control equipment. Creditable reductions must be limited to reductions achieved after 1995 and from controls that were not part of the NO_x SIP Call engine inventory. The credit for reductions in NO_x emissions must be quantified based on the difference between uncontrolled and controlled NO_x emission rates, and ozone season operating hours;

9.2.g. The compliance plan may include credit for reductions in NO_x emissions due to

replacement of any stationary internal combustion engines or other significant NO_x emitting equipment. The owner or operator will demonstrate to the satisfaction of the Secretary that the historic ozone season load capacity of any stationary internal combustion engine or other significant NO_x emitting equipment no longer in operation has been or would be replaced by one or more new stationary internal combustion engines, electric motors or turbines during each ozone season. The credit for reductions in NO_x emissions must be quantified based on the replaced engine's or other significant NO_x emitting equipment's ozone season NO_x emission rate and ozone season operating hours, and the projected emission rate and ozone season operating hours of any new replacement stationary internal combustion engines, electric motors or turbines;

9.2.h. The compliance plan may include credit for reductions in NO_x emissions due to reductions from shifting historic load capacity from an uncontrolled engine to a controlled engine, electric motor or turbine. The owner or operator will demonstrate to the satisfaction of the Secretary that a quantifiable net reduction in NO_x emissions has occurred or will occur due to a direct shift of ozone season load capacity from an uncontrolled engine to a controlled engine, electric motor or turbine. The credit for reductions in NO_x emissions must be quantified based on the uncontrolled engine's historic ozone season load capacity, NO_x emission rate (in g/bhp-hr), ozone season operating hours (in hr/ozone season), and the shifted ozone season load capacity, NO_x emission rate (in g/bhp-hr) and ozone season operating hours (in hr/ozone season) of the controlled stationary internal combustion engine, electric motor or turbine;

9.2.i. The compliance plan may include credit for reductions in NO_x emissions due to the installation and operation of NO_x controls on significant NO_x emitting equipment other than stationary internal combustion engines. The owner or operator will demonstrate to the satisfaction of the Secretary any creditable reductions in NO_x emissions from such NO_x emitting equipment. Creditable reductions must be limited to reductions achieved after 1995 and from controls that were not part of the NO_x SIP Call inventory. The credit for reductions in NO_x emissions must be quantified based on the difference between NO_x emission rates prior to installation of controls and controlled NO_x emission rates, and ozone season operating hours;

9.2.j. The compliance plan must include the following:

9.2.j.1. A list of affected engines or affected NO_x emitting equipment subject to the plan, including the manufacturer, model number, facility location and facility identification number;

9.2.j.2. The projected ozone season hours of operation for each affected engine or affected NO_x emitting equipment and supporting documentation;

9.2.j.3. A description of the NO_x emission controls installed, or to be installed, on each affected engine or affected NO_x emitting equipment, date or proposed date of installation, and documentation to support the controlled NO_x emission rates;

9.2.j.4. The uncontrolled and controlled NO_x emission rates in lb/hr and tons per ozone season for each affected engine or affected NO_x emitting equipment, as applicable;

9.2.j.5. A numerical demonstration that the sum of creditable NO_x emission reductions (in tons) obtained from all affected engines or affected NO_x emitting equipment included under a compliance plan will be equivalent to or greater than the owner or operator's applicable ozone season NO_x reduction under subsection 9.1, taking into account any creditable reductions in NO_x emissions under subdivisions 9.2.e, 9.2.f, 9.2.g, 9.2.h or 9.2.i; and

9.2.j.6. Performance test protocol and provisions for periodic monitoring, reporting and recordkeeping for each affected engine or affected NO_x emitting equipment.

9.2.k. Any creditable reductions in NO_x emissions under subdivisions 9.2.e, 9.2.f, 9.2.g, 9.2.h or

9.2.i must be quantifiable and enforceable through limitations included in a federally enforceable permit or compliance order; and

9.2.1. Any owner or operator with an approved compliance plan under subsection 9.2 may amend the plan with the written approval of the Secretary. Any NO_x emission rate or limitation included in such an amendment must be reflected in a federally enforceable permit or compliance order. The Secretary will either approve by order or disapprove ~~by certified mail in writing~~ the amended compliance plan within 90 days of submission, and notify the Administrator of the compliance plan amendment approval upon issuance of order.

9.3. Monitoring requirements. -- Any owner or operator of an affected engine or affected NO_x emitting equipment subject to a compliance plan under subsection 9.2 must comply with the following monitoring requirements for each affected engine or affected NO_x emitting equipment:

9.3.a. The owner or operator must complete an initial performance test consistent with the requirements of 40 CFR part 60, Appendix A and 45CSR16, following installation of NO_x emission controls required to achieve the NO_x emission rate limit specified in subdivision 9.2.k; and

9.3.b. For the ozone season beginning in 2009, and each ozone season thereafter, the owner or operator will perform periodic monitoring sufficient to yield reliable data which demonstrate compliance with the limitations specified in subdivision 9.2.k. Such periodic monitoring must include:

9.3.b.1. A continuous emission monitoring system that complies with 40 CFR part 75 or 40 CFR part 60 and 45CSR16 and the quality assurance procedures specified in 40 CFR part 60, Appendix F and 45CSR16; or

9.3.b.2. Performance tests consistent with the requirements of 40 CFR part 60, Appendix A and 45CSR16, or portable monitors using ASTM D6522-00; and

9.3.b.2.A. A parametric monitoring program that specifies operating parameters, and their ranges, that will provide reasonable assurance that each affected engine or affected NO_x emitting equipment's emissions are consistent with the requirements of a compliance plan under subsection 9.2. Any such parametric monitoring program must be approved by the Secretary; or

9.3.b.2.B. A predictive emissions measurement system that relies on automated data collection from instruments. Any such predictive emissions measurement system must be approved by the Secretary.

9.4. Recordkeeping requirements. -- Any owner or operator of an affected engine or affected NO_x emitting equipment subject to a compliance plan under subsection 9.2 must comply with the following recordkeeping requirements:

9.4.a. Maintain all records necessary to demonstrate compliance with the requirements of the compliance plan and subsection 9.4 for a period of five calendar years at the facility where an affected engine or affected NO_x emitting equipment is located. Such records will be made available to the Secretary or Administrator upon request; and

9.4.b. For each affected engine or affected NO_x emitting equipment subject to a compliance plan under subsection 9.2, the owner or operator will maintain records of:

9.4.b.1. Identification and location of each affected engine or affected NO_x emitting equipment;

9.4.b.2. Calendar date of record;

9.4.b.3. The number of hours the affected engine or affected NO_x emitting equipment is operated during each ozone season compared to projected operating hours;

9.4.b.4. Type and quantity of fuel combusted; and

9.4.b.5. The results of all compliance tests.

9.5. Reporting requirements. -- Any owner or operator of an affected engine or affected NO_x emitting equipment subject to a compliance plan under subsection 9.2 must:

9.5.a. Notify the Secretary of any performance test under paragraph 9.3.b.2 at least 15 days in advance of such test;

9.5.b. Submit results of all performance tests to the Secretary within 30 days of completion of such tests; and

9.5.c. Submit a report which documents the total ozone season NO_x emissions and certifies compliance with the compliance plan for each affected engine or affected NO_x emitting equipment to the Secretary by October 31 of each year, beginning in 2009. The report must demonstrate and certify compliance with the applicable ozone season NO_x reduction set forth in subsection 9.1.

§45-40-10. Ozone season NO_x reduction requirements for emissions of NO_x from cement manufacturing kilns.

10.1. Standard requirements. -- Effective May 1, 2009, an owner or operator of any Portland cement kiln subject to this section must not operate the kiln during May 1 through September 30 unless the kiln has installed and operates during May 1 to September 30 with low-NO_x burners, mid-kiln firing or alternative control techniques, subject to approval by the Administrator, that achieve at least the same emissions decreases as low-NO_x burners or mid-kiln firing.

10.2. NO_x compliance plan. -- Any owner or operator of a source subject to the standard requirements of subsection 10.1 may elect to use NO_x reductions from any non-affected kiln at a source with a Portland cement kiln under subsection 4.3. If the owner or operator so elects, he or she must submit for approval to the Administrator by May 1, 2009, a NO_x compliance plan which demonstrates the method(s) by which the operator will achieve NO_x reductions from non-affected kilns which achieve at least the same emissions decreases set forth in the standard requirements of subsection 10.1.

10.3. Reporting requirements. -- Any owner or operator subject to the standard requirements of subsection 10.1 must comply with the following reporting requirements:

10.3.a. By May 1, 2009, submit to the Secretary and Administrator the identification number and type of each kiln subject to this section, the name and address of the plant where the kiln is located and the name and telephone number of the person responsible for demonstrating compliance with this section; and

10.3.b. Submit a report documenting for that kiln the total NO_x emissions from May 1 through September 30 of each year to the Secretary and Administrator by October 31 of each year, beginning in 2009.

10.4. Monitoring requirements.

10.4.a. Any owner or operator of a kiln subject to this section must complete an initial performance test and subsequent annual testing consistent with the requirements of 40 CFR part 60, Appendix A, Method 7, 7A, 7C, 7D or 7E; and 45CSR16; and

10.4.b. The operator may use the results of continuous emission monitoring system (CEMS) to replace the annual testing requirements set forth in subdivision 10.4.a. Such equipment must be installed and operated consistent with 40 CFR part 75.

10.5. Recordkeeping requirements. -- Any owner or operator of a kiln subject to this section must produce and maintain records which include, but are not limited to:

10.5.a. The emissions, in pounds of NO_x per ton of clinker produced from each affected Portland cement kiln;

10.5.b. The type of control used for each affected Portland cement kiln;

10.5.c. The date, time and duration of any startup, shutdown or malfunction in the operation of any of the cement kilns or the emissions monitoring equipment;

10.5.d. The results of any performance testing;

10.5.e. Daily cement kiln production records; and

10.5.f. All records required to be produced or maintained will be retained on site for a minimum of 5 years and be made available to the Secretary or Administrator upon request.

§45-40-11. Inconsistency between rules.

11.1. In the event of any inconsistency between this rule and any other rule of the Division of Air Quality, the inconsistency will be resolved by the determination of the Secretary and the determination will be based upon the application of the more stringent provision, term, condition, method or rule.

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45CSR40
NOTICE OF A PROPOSED RULE

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WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

eFILED

6/1/2022 11:02:42 AM

Office of West Virginia
Secretary Of State

NOTICE OF PUBLIC COMMENT PERIOD

AGENCY: Air Quality

TITLE-SERIES: 45-40

RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: Control of Ozone Season Nitrogen Oxides
Emissions

CITE STATUTORY AUTHORITY: W. Va. Code § 22-5-4

COMMENTS LIMITED TO:

Oral and Written

DATE OF PUBLIC HEARING: 07/05/2022 6:00 PM

LOCATION OF PUBLIC HEARING:

Virtual. Register by 5:00pm 7/5/22 at <https://forms.gle/DKdxExuwnr1cQ53v6> or by calling Sandie Adkins or Stephanie Hammonds at (304)926-0475.

DATE WRITTEN COMMENT PERIOD ENDS: 07/05/2022 5:00 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: Sandra Adkins

ADDRESS: WV Department of Environmental Protection, DAQ
601 57th Street, SE Charleston WV 25304

EMAIL: laura.m.jennings@wv.gov

PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: Yes

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

PROVIDE A BRIEF SUMMARY OF THE CONTENT OF THE RULE:

This rule establishes: (a) ozone season nitrogen oxides (NOX) emissions limitations, monitoring, recordkeeping, reporting, excess emissions, and NOX budget demonstration requirements for large industrial boilers and combustion turbines that have a maximum design heat input greater than 250 mmBTU/hr, in accordance with 40 CFR §51.121; (b) ozone season NOX reduction, compliance plan, monitoring, recordkeeping and reporting requirements for affected stationary internal combustion engines; and (c) ozone season NOX control standards, ozone season NOX compliance plan, monitoring, recordkeeping, and reporting requirements for applicable cement manufacturing kilns.

W. Va. State Code §22-5-4(4) prohibits Air Quality rules to be more stringent than any federal rule or program except under limited circumstances. This rule is not more stringent than any federal rule or program.

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN THE RULE AND A STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE:

Summary of changes in the rule:

Section 4.1 of the rule was revised to update the characterization of units that are not subject to this rule because they are subject to a federal NOx ozone season trading program.

9.2.1 - replaced certified mail with in writing.

Statement of circumstances requiring the rule:

This rule is exempt from the Regulatory Moratorium of Executive Order 2-18 under condition 3(g), updating state rules to comply with federal law requirements.

The federal trading program that is referenced to define applicability to this rule was revised and therefore the reference to it requires revision.

Consultation with the Environmental Protection Advisory Council:

The Environmental Protection Advisory Council received a copy of this proposed rule in advance of the scheduled June 9, 2022 meeting.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

The proposed revisions to this rule is not expected to impact revenues of state government.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

The proposed revisions to this rule is not expected to impact special revenue accounts.

C. ECONOMIC IMPACT OF THE RULE ON THE STATE OR ITS RESIDENTS:

The proposed revision to this rule should not have any additional impact on the cost of state government beyond that resulting from currently applicable federal requirements, nor should it have an economic impact on the state or its residents.

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2022 Increase/Decrease (use "-")	2023 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

The revision to this rule is not expected to impact costs and revenues of state government.

In accordance with W. Va. Code §22-1A 3(c), the Secretary has determined that this rule will not result in a taking of private property within the meaning of the Constitutions of West Virginia and the

United States of America.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Jason E Wandling -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 45
LEGISLATIVE RULE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
AIR QUALITY

SERIES 40
CONTROL OF OZONE SEASON NITROGEN OXIDES EMISSIONS

§45-40-1. General.

1.1. Scope. -- This rule establishes:

1.1.a. Ozone season NO_x emission limitation, monitoring, recordkeeping, reporting, excess emissions, and NO_x budget demonstration requirements for large industrial boilers and combustion turbines that have a maximum design heat input greater than 250 mmBTU/hr, in accordance with 40 CFR §51.121;

1.1.b. Ozone season NO_x reduction, compliance plan, monitoring, recordkeeping and reporting requirements for affected stationary internal combustion engines; and

1.1.c. Ozone season NO_x control standards, ozone season NO_x compliance plan, reporting, monitoring and recordkeeping requirements for applicable cement manufacturing kilns.

1.2. Authority. -- W.Va. Code §22-5-4.

1.3. Filing Date. -- ~~June 1, 2020.~~

1.4. Effective Date. -- ~~June 1, 2020.~~

1.5. Sunset Provision. -- Exempt.

§45-40-2. Definitions.

2.1. “Administrator” means the Administrator of the United States Environmental Protection Agency (U.S. EPA) or the Administrator’s duly authorized representative.

2.2. “Boiler” means an enclosed fossil or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

2.3. “Clean Air Act” or “CAA” means the Clean Air Act, 42 U.S.C. 7401, et seq., as amended.

2.4. “Clinker” means the product of a Portland cement kiln from which finished cement is manufactured by milling and grinding.

2.5. “Combustion turbine” means:

2.5.a. An enclosed device comprising a compressor, a combustor, and a turbine and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine; and

2.5.b. If the enclosed device under subdivision 2.6.a is combined cycle, any associated duct burner, heat recovery steam generator, and steam turbine.

2.6. “Continuous emission monitoring system” or “CEMS” means, except for purposes of subsections

2.15 and 6.2, the total equipment required for the determination of NO_x emission rate, expressed in pounds per million British thermal units (lb/mmBtu). For the purposes of this rule, CEMS is used for continuous compliance determinations. The sample interface, pollutant analyzer, diluent analyzer, and data recorder are the major subsystems of the CEMS. The principal type of continuous emission monitoring system is:

2.6.a. A nitrogen oxides emission rate (or NO_x-diluent) monitoring system, consisting of a NO_x pollutant concentration monitor, a diluent gas (CO₂ or O₂) monitor, and an automated data acquisition and handling system and providing a permanent, continuous record of NO_x concentration, in parts per million (ppm), diluent gas concentration, in percent CO₂ or O₂; and NO_x emission rate, in pounds per million British thermal units (lb/mmBtu);

2.7. "Excess emissions" means nitrogen oxides emitted by an applicable unit under subsection 4.1 during an ozone season that exceeds the ozone season NO_x emissions limitation for the unit set forth in section 5.

2.8. "Fossil fuel" means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

2.9. "Fossil fuel-fired" means, with regard to a unit, and solely for purposes of applying the applicability provisions in subsection 4.1:

2.9.a. The combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than 50 percent of the annual heat input on a Btu basis during any year; or

2.9.b. The combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel is projected to comprise more than 50 percent of the annual heat input on a Btu basis during any year; provided that the unit shall be "fossil fuel-fired" as of the date, during such year, on which the unit begins combusting fossil fuel.

2.10. "Large NO_x SIP call engine" means a stationary internal combustion engine identified and designated as "large" in the NO_x SIP Call Engine Inventory as emitting more than one ton of NO_x per average ozone season day in 1995.

2.11. "Long dry kiln" means a kiln 14 feet or larger in diameter, 400 feet or greater in length, which employs no preheating of the feed. The inlet feed to the kiln is dry.

2.12. "Long wet kiln" means a kiln 14 feet or larger in diameter, 400 feet or greater in length, which employs no preheating of the feed. The inlet feed to the kiln is a slurry.

2.13. "Low-NO_x burners" means combustion equipment designed to reduce flame turbulence, delay fuel/air mixing and establish fuel-rich zones for initial combustion.

2.14. "Mid-kiln firing" means the secondary firing in kilns by injecting solid fuel at an intermediate point in the kiln using a specially designed feed injection mechanism for the purpose of decreasing NO_x emissions through:

2.14.a. Burning part of the fuel at a lower temperature; and

2.14.b. Reducing conditions at the solid waste injection point that may destroy some of the NO_x formed upstream in the kiln burning zone.

2.15. "Monitoring system" means, for purposes of subsection 6.2, a continuous emissions monitoring system, an alternative monitoring system, or an excepted monitoring system under 40 CFR part 75 as defined in 40 CFR §72.2.

2.16. “Nitrogen oxides” or “NO_x” means all oxides of nitrogen except nitrous oxide (N₂O), reported on an equivalent molecular weight basis as nitrogen dioxide (NO₂).

2.17. “NO_x SIP Call Engine Inventory” means the inventory of internal combustion engines compiled by U.S. EPA as part of the NO_x SIP Call Rule, including the technical amendments, announced in the March 2, 2000 Federal Register, page 11222, and the adjustment of the 2007 Budget NO_x Control Efficiency to 82 percent for large gas-fired engines, announced in the April 21, 2004 Federal Register notice, page 21604 for the Phase II NO_x SIP Call Rule.

2.18. “Ozone season” means the period beginning May 1 of a calendar year, and ending on September 30 of the same year, inclusive.

2.19. “Performance Specification 2” or “PS 2” means the Specifications and Test Procedures for SO₂ and NO_x Continuous Emission Monitoring Systems in Stationary Sources provided in Appendix B to 40 CFR part 60. For purposes of subsections 6.3 and 6.5, these procedures are used for measuring CEMS relative accuracy and calibration drift and include CEMS installation and measurement location specifications, equipment specifications, performance specifications, and data reduction.

2.20. “Performance Specification 16” or “PS 16” means the Specifications and Test Procedures for Predictive Emission Monitoring Systems (PEMS) in Stationary Sources provided in Appendix B to 40 CFR part 60. For purposes of subsection 6.4, these procedures are used to determine whether the PEMS is acceptable for use in demonstrating compliance with the NO_x emission limit and to certify the PEMS initially. They are also used periodically thereafter to ensure the PEMS is operating properly. These specifications apply to PEMS that are installed on or after April 24, 2009.

2.21. “Predictive Emission Monitoring System” or “PEMS” means all of the equipment required to predict an emission concentration or emission rate. The system may consist of any of the following major subsystems: sensors and sensor interfaces, emission model, algorithm, or equation that uses process data to generate an output that is proportional to the emission concentration or emission rate, diluent emission model, data recorder, and sensor evaluation system. Systems that use fewer than three (3) variables do not qualify as PEMS unless the system has been specifically approved by the Administrator for use as a PEMS. A PEMS may predict emissions data that are corrected for diluent if the relative accuracy and relevant QA tests are passed in the emission units corrected for diluent. Parametric monitoring systems that serve as indicators of compliance and have parametric limits but do not predict emissions to comply with an emissions limit are not included in this definition.

2.22. “Portland cement” means a hydraulic cement produced by pulverizing clinker consisting essentially of hydraulic calcium silicates, usually containing one or more of the forms of calcium sulfate as an interground addition.

2.23. “Portland cement kiln” means a system, including any solid, gaseous or liquid fuel combustion equipment, used to calcine and fuse raw materials, including limestone and clay, to produce Portland cement clinker.

2.24. “Precalciner kiln” means a kiln where the feed to the kiln system is preheated in cyclone chambers and utilizes a second burner to calcine material in a separate vessel attached to the preheater prior to the final fusion in a kiln which forms clinker.

2.25. “Preheater kiln” means a kiln where the feed to the kiln system is preheated in cyclone chambers prior to the final fusion in a kiln which forms clinker.

2.26. “Secretary” means the Secretary of the Department of Environmental Protection or such other person to whom the Secretary has delegated authority or duties pursuant to W.Va. Code §§22-1-6 or 22-1-

8.

2.27. “Source” means all buildings, structures, or installations located in one or more contiguous or adjacent properties under common control of the same person or persons.

2.28. “Stationary internal combustion engine” or “engine” means any internal combustion engine of the reciprocating type that is either attached to a foundation at a facility or is designed to be capable of being carried or moved from one location to another and remains at a single site at a building, structure, facility, or installation for more than 12 consecutive months. Any engine (or engines) that replaces an engine at a site that is intended to perform the same or similar function as the engine replaced is included in calculating the consecutive time period.

2.29. “Ton” means 2,000 pounds.

2.30. “Unit” means a stationary fossil fuel-fired boiler, combustion turbine, or combined cycle system.

2.31. Other words and phrases used in this rule, unless otherwise indicated, will have the meaning ascribed to them in W.Va. Code §22-5-1 et seq. and 40 CFR §72.2.

§45-40-3. Measurements, abbreviations and acronyms.

3.1. Measurements, abbreviations and acronyms used in this rule are defined as follows:

- 3.1.a. Btu -- British thermal unit.
- 3.1.b. CEMS -- Continuous Emissions Monitoring System.
- 3.1.c. CO₂ -- carbon dioxide.
- 3.1.d. CSAPR -- Cross-State Air Pollution Rule.
- 3.1.e. g/bhp-hr -- grams per brake horsepower hour.
- 3.1.f. Hr -- hour.
- 3.1.g. MmBtu -- million Btu.
- 3.1.h. NO_x -- nitrogen oxides.
- 3.1.i. O₂ -- oxygen.
- 3.1.j. PEMS -- Predictive Emission Monitoring System.
- 3.1.k. SO₂ -- sulfur dioxide.
- 3.1.l. Tph -- tons per hour.
- 3.1.m. Yr -- year.

§45-40-4. Applicability.

4.1. The owner or operator of a unit that has a maximum design heat input greater than 250 mmBtu/hr, except for any unit subject to ~~the federal Cross-State Air Pollution Rule (CSAPR) NO_x Ozone Season Group 2~~ a seasonal NO_x trading program established under 40 CFR part 97, subpart EEEE, or an

~~equivalent trading program established under 45CSR43 and approved as a state implementation plan revision pursuant to 40 CFR §52.38(b)(9); in accordance with a federal implementation plan set forth in 40 CFR § 52.38(b) or subject to a seasonal NO_x trading program established under a SIP revision approved by the U.S. EPA as meeting the requirements of 40 CFR § 52.38(b).~~ shall comply with the ozone season NO_x emission limitation, and monitoring, recordkeeping and reporting requirements for ozone season emissions of NO_x set forth in sections 5 and 6 below.

4.2. Effective May 1, 2009, the owner or operator of a large NO_x SIP Call engine shall comply with the ozone season NO_x reduction, compliance plan, monitoring, recordkeeping and reporting requirements set forth in section 9 below.

4.3. Effective May 1, 2009, the owner or operator of a kiln that meets the following applicability requirements shall comply with the ozone season NO_x control standards, ozone season NO_x compliance plan, reporting, monitoring and recordkeeping requirements set forth in section 10 below:

- 4.3.a. Long dry kilns \geq 12 TPH process rate;
- 4.3.b. Long wet kilns \geq 10 TPH process rate;
- 4.3.c. Preheater kilns \geq 16 TPH process rate; and
- 4.3.d. Precalciner and preheater/precalciner kilns \geq 22 TPH process rate.

§45-40-5. Ozone season NO_x emission limitation.

5.1. Ozone season NO_x limitation. -- Beginning May 1, 2016, the owner or operator of a unit that meets the applicability requirements set forth in subsection 4.1 shall limit emissions of NO_x during an ozone season pursuant to a NO_x emission rate for each unit contained in a permit issued under 45CSR13, 45CSR14, 45CSR19 or via consent order issued by the Secretary in accordance with W.Va. Code §22-5-4(a)(5). Such ozone season NO_x limitation may also include a limitation on operating time for a unit during the ozone season.

§45-40-6. Monitoring, recordkeeping and reporting requirements.

6.1. The owner or operator of an applicable unit under subsection 4.1 shall comply with the provisions of 40 CFR part 75, subpart H (including use of any of the emissions monitoring methodologies which the unit qualifies to use under 40 CFR part 75) or shall install and operate a certified continuous emission monitoring system (CEMS) or a certified predictive emission monitoring system (PEMS) as necessary to attribute ozone season mass emissions of NO_x to each unit in accordance with subsection 6.2, 6.3, 6.4 or 6.5 below. Nitrogen oxides mass emissions measurements recorded and reported in accordance with subsection 6.2, 6.3, 6.4 or 6.5 shall be used to determine a unit's compliance with the ozone season NO_x emission limitation set forth in section 5.

6.2. An owner or operator that elects to demonstrate compliance in accordance with 40 CFR part 75, subpart H, shall meet the following requirements:

- 6.2.a. Install, calibrate, certify, maintain, monitor, and operate all required monitoring systems in accordance with 40 CFR part 75, subpart H;
- 6.2.b. Maintain records in accordance with 40 CFR part 75, subpart H ; and
- 6.2.c. Submit reports in accordance with 40 CFR part 75, subpart H.

6.3. An owner or operator that elects to demonstrate compliance using a CEMS in accordance with

40 CFR part 60, subpart Db and 45CSR16 shall meet the following requirements:

6.3.a. Install and certify the CEMS in accordance with Performance Specification 2 in Appendix B to 40 CFR part 60;

6.3.b. Operate and maintain the CEMS in accordance with 40 CFR §60.46b on a continuous basis;

6.3.c. Install, calibrate, maintain and operate the CEMS in accordance with the continuous monitoring requirements of:

6.3.c.1. 40 CFR §§60.48b and 60.13; or

6.3.c.2. 40 CFR §§60.47b(e) and 60.13;

6.3.d. For each month of the ozone season:

6.3.d.1. Determine total monthly heat input (in mmBtu) using fuel flowmeters and measurements or records of fuel gross calorific value, or in instances where fuel flow is not metered determine total monthly heat input (in mmBtu) from other measurements and records; and

6.3.d.2. Calculate total monthly NO_x mass emissions (in tons) by multiplying the total monthly heat input by the 30-day rolling average NO_x emission rate (in lb/mmBtu) determined under subdivisions 6.3.b and 6.3.c for the last day of the month on which the unit operated and divide by 2000;

6.3.e. Determine the total NO_x mass emissions for the ozone season (in tons) by summing the amounts of total monthly NO_x mass emissions calculated under subdivision 6.3.d for each month of the ozone season; and

6.3.f. Comply with the following reporting and recordkeeping requirements:

6.3.f.1. Maintain records in accordance with 40 CFR §60.49b and all additional records necessary to support the heat input data, 30-day rolling average NO_x emission rate data, and NO_x mass emissions computations described in subdivisions 6.3.d and 6.3.e; and

6.3.f.2. Submit to the Secretary reports in accordance with 40 CFR §60.49b and include the total monthly heat input data, 30-day rolling average NO_x emission rate data, and monthly and ozone season NO_x mass emissions computations described in subdivisions 6.3.d and 6.3.e.

6.4. An owner or operator not otherwise required to use a CEMS to demonstrate compliance with 40 CFR part 60 may elect to demonstrate compliance using a PEMS and shall meet the following requirements:

6.4.a. Install and certify the PEMS in accordance with Performance Specification 16 in Appendix B to 40 CFR part 60 and the Quality Assurance Procedures for compliance PEMS in Appendix F to 40 CFR part 60;

6.4.b. Submit to the Secretary for approval a plan that identifies the operating conditions to be monitored and the records to be maintained in accordance with 40 CFR §60.49b(c). The request for plan approval shall be contained in the permit application or consent order required under subsection 6.6;

6.4.c. Operate and maintain the compliance PEMS on a continuous basis in accordance with 40 CFR §60.46b and the compliance PEMS requirements provided in Performance Specification 16 in Appendix B to 40 CFR part 60;

6.4.d. Comply with the continuous monitoring requirements of 40 CFR §§60.48b and 60.13;

6.4.e. For each month of the ozone season:

6.4.e.1. Determine total monthly heat input (in mmBtu) using fuel flowmeters and measurements or records of fuel gross calorific value, or in instances where fuel flow is not metered determine total monthly heat input (in mmBtu) from other measurements and records; and

6.4.e.2. Calculate total monthly NO_x mass emissions (in tons) by multiplying the total monthly heat input by the 30-day rolling average NO_x emission rate (in lb/mmBtu) determined under subdivisions 6.4.c and 6.4.d for the last day of the month on which the unit operated and divide by 2000;

6.4.f. Determine the total NO_x mass emissions for the ozone season (in tons) by summing the amounts of total monthly NO_x mass emissions calculated under subdivision 6.4.e for each month of the ozone season; and

6.4.g. Comply with the following reporting and recordkeeping requirements:

6.4.g.1. Maintain records in accordance with 40 CFR §60.49b and all additional records necessary to support the heat input data, 30-day rolling average NO_x emission rate data, and NO_x mass emissions computations described in subdivisions 6.4.e and 6.4.f; and

6.4.g.2. Submit to the Secretary reports in accordance with 40 CFR §60.49b and include the total monthly heat input data, 30-day rolling average NO_x emission rate data, and monthly and ozone season NO_x mass emissions computations described in subdivisions 6.4.e and 6.4.f.

6.5. An owner or operator of a combustion turbine unit that elects to demonstrate compliance using a CEMS shall meet the following requirements:

6.5.a. Install and certify the CEMS in accordance with Performance Specification 2 in Appendix B to 40 CFR part 60 and 45CSR16;

6.5.b. Conduct the performance tests in accordance with 40 CFR §60.4400;

6.5.c. Operate and maintain the CEMS in accordance with 40 CFR §60.4345 on a continuous basis;

6.5.d. Collect all CEMS data in accordance with 40 CFR §60.4350;

6.5.e. For each month of the ozone season:

6.5.e.1. Determine total monthly heat input (in mmBtu) using fuel flowmeters and measurements or records of fuel gross calorific value, or in instances where fuel flow is not metered determine total monthly heat input (in mmBtu) from other measurements and records; and

6.5.e.2. Calculate total monthly NO_x mass emissions (in tons) by multiplying the total monthly heat input by the 30-day rolling average NO_x emission rate (in lb/mmBtu) determined under subdivisions 6.5.c and 6.5.d for the last day of the month on which the unit operated and divide by 2000;

6.5.f. Determine the total NO_x mass emissions for the ozone season (in tons) by summing the amounts of total monthly NO_x mass emissions calculated under subdivision 6.5.e for each month of the ozone season; and

6.5.g. Comply with the following reporting and recordkeeping requirements:

6.5.g.1. Maintain records in accordance with 40 CFR §60.49b and all additional records necessary to support the heat input data, 30-day rolling average NO_x emission rate data, and NO_x mass emissions computations described in subdivisions 6.5.e and 6.5.f; and

6.4.g.2. Submit to the Secretary reports in accordance with 40 CFR §60.49b and include the total monthly heat input data, 30-day rolling average NO_x emission rate data, and monthly and ozone season NO_x mass emissions computations described in subdivisions 6.5.e and 6.5.f.

6.6. An owner or operator that elects an alternative monitoring scenario that is not currently contained in a permit issued pursuant to 45CSR13, 45CSR14 or 45CSR19 or via a consent order shall:

6.6.a. Submit a request for the alternative monitoring scenario in a permit application in accordance with 45CSR13, 45CSR14 or 45CSR19. For compliance options provided in 6.3, 6.4 or 6.5, the permit application should identify how NO_x emissions (in tons) will be determined using the CEMS or PEMS data; and.

6.6.b. Obtain approval from the Secretary via a permit issued under 45CSR13, 45CSR14 or 45CSR19 or via a consent order, effective prior to the start of the ozone season.

6.7. An owner or operator electing to demonstrate compliance with 40 CFR part 75, subpart H shall not use any alternative monitoring system, alternative reference method, or any other alternative for the requirements under 40 CFR part 75, subpart H prior to obtaining written approval by the Administrator in accordance with 40 CFR §75.70(h).

6.8. An owner or operator required to demonstrate compliance with a NO_x emissions limit under 40 CFR part 60, subpart Db shall not use an alternative monitoring system, reference method, or other CEMS requirements alternative under 40 CFR part 60, subpart Db prior to obtaining written approval by the Administrator.

6.9. The owner or operator of an applicable unit under subsection 4.1 may demonstrate compliance with the NO_x ozone season emission limitation set forth in section 5 in accordance with an alternative monitoring system under 40 CFR part 60, subpart Db without obtaining approval of the Secretary, provided the owner or operator obtained written approval from the Administrator prior to the effective date of this rule.

§45-40-7. Violation.

7.1. The owner or operator of an applicable unit under subsection 4.1 shall be subject to enforcement pursuant to W.Va. Code §22-5-1 et seq. or the CAA for excess emissions of NO_x during an ozone season if the unit emitted nitrogen oxides in excess of its ozone season NO_x emission limitation set forth in section 5.

§45-40-8. Ozone season NO_x budget demonstration.

8.1. Ozone season NO_x budget. -- The ozone season NO_x budget for all units that meet the applicability requirements set forth in subsection 4.1 is 2,184 tons.

8.2. Ozone season NO_x budget demonstration. -- Through the imposition of ozone season NO_x limitations under section 5, and assumption of maximum operating capacity or use of a limitation on operating time for a unit during the ozone season, the Secretary shall demonstrate to the Administrator that the ozone season NO_x emissions from all applicable units under subsection 4.1 meets the ozone season NO_x budget for these units set forth in subsection 8.1.

8.3. New units. -- The Secretary shall revise the ozone season NO_x budget demonstration under

subsection 8.2 to accommodate the ozone season NO_x emissions of any new unit that meets the applicability requirements set forth in subsection 4.1. The ozone season NO_x emissions from any such new unit shall not cause the ozone season NO_x budget set forth in subsection 8.1 to be exceeded.

§45-40-9. Ozone season NO_x reduction requirements for stationary internal combustion engines.

9.1. Ozone season NO_x reduction. -- Effective May 1, 2009, the following owners or operators must reduce ozone season NO_x emissions by an amount equal to or greater than the applicable ozone season NO_x reduction listed in the table below. The applicable ozone season NO_x reduction is binding on the listed owners or operators, their successors and assigns:

Company	Ozone Season NO _x Reduction
Dominion	668 tons
Columbia Gas Transmission	235 tons
Total	903 tons

9.2. Compliance plan. -- Effective May 1, 2009, an owner or operator of a large stationary internal combustion engine under subsection 4.2 must not operate such engine in the period May 1 through September 30 of 2009 and any subsequent year unless the owner or operator demonstrates the applicable ozone season NO_x reduction under subsection 9.1 through the requirements of an approved compliance plan. The compliance plan shall meet the following provisions:

9.2.a. Reserved;

9.2.b. Reserved;

9.2.c. The compliance plan must demonstrate quantifiable and enforceable NO_x emission reductions equal to or greater than the applicable ozone season NO_x reduction set forth in subsection 9.1, taking into account any creditable reduction in NO_x emissions under subdivisions 9.2.e, 9.2.f, 9.2.g, 9.2.h or 9.2.i;

9.2.d. The compliance plan may include and affect some or all stationary internal combustion engines or other significant NO_x emitting equipment at an individual facility, at several facilities, or at all facilities in West Virginia that are controlled by the same owner or operator;

9.2.e. The compliance plan may include credit for reductions in NO_x emissions due to the installation and operation of NO_x control equipment on large stationary internal combustion engines under subsection 9.1. The owner or operator will demonstrate to the satisfaction of the Secretary any creditable reductions in NO_x emissions from the installation and operation of such NO_x control equipment. The credit for reductions in NO_x emissions must be quantified based on the difference between uncontrolled and controlled NO_x emission rates, and ozone season operating hours;

9.2.f. The compliance plan may include credit for reductions in NO_x emissions due to the installation and operation of NO_x control equipment on uncontrolled stationary internal combustion engines not under subsection 4.2. The owner or operator will demonstrate to the satisfaction of the Secretary any creditable reductions in NO_x emissions from the installation and operation of such NO_x control equipment. Creditable reductions must be limited to reductions achieved after 1995 and from controls that were not part of the NO_x SIP Call engine inventory. The credit for reductions in NO_x emissions must be quantified based on the difference between uncontrolled and controlled NO_x emission rates, and ozone season operating hours;

9.2.g. The compliance plan may include credit for reductions in NO_x emissions due to

replacement of any stationary internal combustion engines or other significant NO_x emitting equipment. The owner or operator will demonstrate to the satisfaction of the Secretary that the historic ozone season load capacity of any stationary internal combustion engine or other significant NO_x emitting equipment no longer in operation has been or would be replaced by one or more new stationary internal combustion engines, electric motors or turbines during each ozone season. The credit for reductions in NO_x emissions must be quantified based on the replaced engine's or other significant NO_x emitting equipment's ozone season NO_x emission rate and ozone season operating hours, and the projected emission rate and ozone season operating hours of any new replacement stationary internal combustion engines, electric motors or turbines;

9.2.h. The compliance plan may include credit for reductions in NO_x emissions due to reductions from shifting historic load capacity from an uncontrolled engine to a controlled engine, electric motor or turbine. The owner or operator will demonstrate to the satisfaction of the Secretary that a quantifiable net reduction in NO_x emissions has occurred or will occur due to a direct shift of ozone season load capacity from an uncontrolled engine to a controlled engine, electric motor or turbine. The credit for reductions in NO_x emissions must be quantified based on the uncontrolled engine's historic ozone season load capacity, NO_x emission rate (in g/bhp-hr), ozone season operating hours (in hr/ozone season), and the shifted ozone season load capacity, NO_x emission rate (in g/bhp-hr) and ozone season operating hours (in hr/ozone season) of the controlled stationary internal combustion engine, electric motor or turbine;

9.2.i. The compliance plan may include credit for reductions in NO_x emissions due to the installation and operation of NO_x controls on significant NO_x emitting equipment other than stationary internal combustion engines. The owner or operator will demonstrate to the satisfaction of the Secretary any creditable reductions in NO_x emissions from such NO_x emitting equipment. Creditable reductions must be limited to reductions achieved after 1995 and from controls that were not part of the NO_x SIP Call inventory. The credit for reductions in NO_x emissions must be quantified based on the difference between NO_x emission rates prior to installation of controls and controlled NO_x emission rates, and ozone season operating hours;

9.2.j. The compliance plan must include the following:

9.2.j.1. A list of affected engines or affected NO_x emitting equipment subject to the plan, including the manufacturer, model number, facility location and facility identification number;

9.2.j.2. The projected ozone season hours of operation for each affected engine or affected NO_x emitting equipment and supporting documentation;

9.2.j.3. A description of the NO_x emission controls installed, or to be installed, on each affected engine or affected NO_x emitting equipment, date or proposed date of installation, and documentation to support the controlled NO_x emission rates;

9.2.j.4. The uncontrolled and controlled NO_x emission rates in lb/hr and tons per ozone season for each affected engine or affected NO_x emitting equipment, as applicable;

9.2.j.5. A numerical demonstration that the sum of creditable NO_x emission reductions (in tons) obtained from all affected engines or affected NO_x emitting equipment included under a compliance plan will be equivalent to or greater than the owner or operator's applicable ozone season NO_x reduction under subsection 9.1, taking into account any creditable reductions in NO_x emissions under subdivisions 9.2.e, 9.2.f, 9.2.g, 9.2.h or 9.2.i; and

9.2.j.6. Performance test protocol and provisions for periodic monitoring, reporting and recordkeeping for each affected engine or affected NO_x emitting equipment.

9.2.k. Any creditable reductions in NO_x emissions under subdivisions 9.2.e, 9.2.f, 9.2.g, 9.2.h or

9.2.i must be quantifiable and enforceable through limitations included in a federally enforceable permit or compliance order; and

9.2.1. Any owner or operator with an approved compliance plan under subsection 9.2 may amend the plan with the written approval of the Secretary. Any NO_x emission rate or limitation included in such an amendment must be reflected in a federally enforceable permit or compliance order. The Secretary will either approve by order or disapprove ~~by certified mail in writing~~ the amended compliance plan within 90 days of submission, and notify the Administrator of the compliance plan amendment approval upon issuance of order.

9.3. Monitoring requirements. -- Any owner or operator of an affected engine or affected NO_x emitting equipment subject to a compliance plan under subsection 9.2 must comply with the following monitoring requirements for each affected engine or affected NO_x emitting equipment:

9.3.a. The owner or operator must complete an initial performance test consistent with the requirements of 40 CFR part 60, Appendix A and 45CSR16, following installation of NO_x emission controls required to achieve the NO_x emission rate limit specified in subdivision 9.2.k; and

9.3.b. For the ozone season beginning in 2009, and each ozone season thereafter, the owner or operator will perform periodic monitoring sufficient to yield reliable data which demonstrate compliance with the limitations specified in subdivision 9.2.k. Such periodic monitoring must include:

9.3.b.1. A continuous emission monitoring system that complies with 40 CFR part 75 or 40 CFR part 60 and 45CSR16 and the quality assurance procedures specified in 40 CFR part 60, Appendix F and 45CSR16; or

9.3.b.2. Performance tests consistent with the requirements of 40 CFR part 60, Appendix A and 45CSR16, or portable monitors using ASTM D6522-00; and

9.3.b.2.A. A parametric monitoring program that specifies operating parameters, and their ranges, that will provide reasonable assurance that each affected engine or affected NO_x emitting equipment's emissions are consistent with the requirements of a compliance plan under subsection 9.2. Any such parametric monitoring program must be approved by the Secretary; or

9.3.b.2.B. A predictive emissions measurement system that relies on automated data collection from instruments. Any such predictive emissions measurement system must be approved by the Secretary.

9.4. Recordkeeping requirements. -- Any owner or operator of an affected engine or affected NO_x emitting equipment subject to a compliance plan under subsection 9.2 must comply with the following recordkeeping requirements:

9.4.a. Maintain all records necessary to demonstrate compliance with the requirements of the compliance plan and subsection 9.4 for a period of five calendar years at the facility where an affected engine or affected NO_x emitting equipment is located. Such records will be made available to the Secretary or Administrator upon request; and

9.4.b. For each affected engine or affected NO_x emitting equipment subject to a compliance plan under subsection 9.2, the owner or operator will maintain records of:

9.4.b.1. Identification and location of each affected engine or affected NO_x emitting equipment;

9.4.b.2. Calendar date of record;

9.4.b.3. The number of hours the affected engine or affected NO_x emitting equipment is operated during each ozone season compared to projected operating hours;

9.4.b.4. Type and quantity of fuel combusted; and

9.4.b.5. The results of all compliance tests.

9.5. Reporting requirements. -- Any owner or operator of an affected engine or affected NO_x emitting equipment subject to a compliance plan under subsection 9.2 must:

9.5.a. Notify the Secretary of any performance test under paragraph 9.3.b.2 at least 15 days in advance of such test;

9.5.b. Submit results of all performance tests to the Secretary within 30 days of completion of such tests; and

9.5.c. Submit a report which documents the total ozone season NO_x emissions and certifies compliance with the compliance plan for each affected engine or affected NO_x emitting equipment to the Secretary by October 31 of each year, beginning in 2009. The report must demonstrate and certify compliance with the applicable ozone season NO_x reduction set forth in subsection 9.1.

§45-40-10. Ozone season NO_x reduction requirements for emissions of NO_x from cement manufacturing kilns.

10.1. Standard requirements. -- Effective May 1, 2009, an owner or operator of any Portland cement kiln subject to this section must not operate the kiln during May 1 through September 30 unless the kiln has installed and operates during May 1 to September 30 with low-NO_x burners, mid-kiln firing or alternative control techniques, subject to approval by the Administrator, that achieve at least the same emissions decreases as low-NO_x burners or mid-kiln firing.

10.2. NO_x compliance plan. -- Any owner or operator of a source subject to the standard requirements of subsection 10.1 may elect to use NO_x reductions from any non-affected kiln at a source with a Portland cement kiln under subsection 4.3. If the owner or operator so elects, he or she must submit for approval to the Administrator by May 1, 2009, a NO_x compliance plan which demonstrates the method(s) by which the operator will achieve NO_x reductions from non-affected kilns which achieve at least the same emissions decreases set forth in the standard requirements of subsection 10.1.

10.3. Reporting requirements. -- Any owner or operator subject to the standard requirements of subsection 10.1 must comply with the following reporting requirements:

10.3.a. By May 1, 2009, submit to the Secretary and Administrator the identification number and type of each kiln subject to this section, the name and address of the plant where the kiln is located and the name and telephone number of the person responsible for demonstrating compliance with this section; and

10.3.b. Submit a report documenting for that kiln the total NO_x emissions from May 1 through September 30 of each year to the Secretary and Administrator by October 31 of each year, beginning in 2009.

10.4. Monitoring requirements.

10.4.a. Any owner or operator of a kiln subject to this section must complete an initial performance test and subsequent annual testing consistent with the requirements of 40 CFR part 60, Appendix A, Method 7, 7A, 7C, 7D or 7E; and 45CSR16; and

10.4.b. The operator may use the results of continuous emission monitoring system (CEMS) to replace the annual testing requirements set forth in subdivision 10.4.a. Such equipment must be installed and operated consistent with 40 CFR part 75.

10.5. Recordkeeping requirements. -- Any owner or operator of a kiln subject to this section must produce and maintain records which include, but are not limited to:

10.5.a. The emissions, in pounds of NO_x per ton of clinker produced from each affected Portland cement kiln;

10.5.b. The type of control used for each affected Portland cement kiln;

10.5.c. The date, time and duration of any startup, shutdown or malfunction in the operation of any of the cement kilns or the emissions monitoring equipment;

10.5.d. The results of any performance testing;

10.5.e. Daily cement kiln production records; and

10.5.f. All records required to be produced or maintained will be retained on site for a minimum of 5 years and be made available to the Secretary or Administrator upon request.

~~§45-40-11.~~ Inconsistency between rules.

11.1. In the event of any inconsistency between this rule and any other rule of the Division of Air Quality, the inconsistency will be resolved by the determination of the Secretary and the determination will be based upon the application of the more stringent provision, term, condition, method or rule.

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45CSR40
PUBLIC PARTICIPATION

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Public Notice

west virginia



department of environmental protection

Page 1 of 2

Public Notice

West Virginia Department of Environmental Protection Division of Air Quality

Comment Period Opens: June 3, 2022

Comment Period Closes: July 5, 2022

Publication: Charleston Newspapers and West Virginia State Register

Publication Date: June 3, 2022

Type of Notice: Public Comment Period and Public Hearing

Location: Statewide

Proposed Activity: DAQ 2023 Legislative Rules

Project Description: The DAQ proposed 2023 legislative rules include:

45CSR16 (Standards of Performance for New Stationary Sources)

45CSR22 (Air Quality Management Fee Program)

45CSR30 (Requirements for Operating Permits)

45CSR34 (Emission Standards for Hazardous Air Pollutants)

45CSR40 (Control of Ozone Season Nitrogen Oxides Emissions)

Upon authorization and promulgation of the final rules, 45CSR16, 45CSR30, and 45CSR34 will be submitted to the United States Environmental Protection Agency (EPA) to fulfill federal obligations under the Clean Air Act (CAA), including delegations and authorizations. Upon authorization and promulgation, 45CSR40 will be submitted to EPA for approval as a revision to the State Implementation Plan (SIP) pursuant to the federal CAA. Upon authorization and promulgation, 45CSR22 will be a state only rule, with no further action.

The proposed rules are available at:

- the Secretary of State's website at <http://apps.sos.wv.gov/adlaw/csr/>,
- the DEP website at <http://www.dep.wv.gov/pio/Pages/Rules.aspx>, or
- the DAQ website at <https://dep.wv.gov/daq/publicnoticeandcomment/Pages/default.aspx>.

- If you do not have internet capability, please contact DAQ for alternatives.

Point of Contact: Laura Jennings (laura.m.jennings@wv.gov or 304-926-0475)

The DEP is holding the public hearing virtually. Instructions for participating and providing verbal comments are provided below. Both verbal and written comments will be made part of the official rulemaking record.

Written comments may be submitted at any time during the public comment period as instructed below. Written comments must be received by 5:00 pm on July 5. Written comments received after 5:00 pm on July 5 will not be accepted.

Written Comments:

- E-mail written comments to Laura.M.Jennings@wv.gov with “Proposed DAQ 2023 Rule Comments” in the subject line, or
- Mail hard copy comments to the attention of Sandra Adkins at the WV Department of Environmental Protection, Division of Air Quality, 601 57th Street SE, Charleston, WV 25304.

Public Hearing: July 5, 2022 at 6:00 p.m.

The purpose of the public hearing is to receive comments concerning the proposed DAQ 2023 legislative rules identified above. A Response to Comments document will be prepared as part of the rulemaking process. A separate hearing will be held for each of the proposed rules. The hearings will be held sequentially and will commence immediately following the conclusion of the hearing for the previous proposed rule.

To participate online or by telephone, registration is required by 5:00 p.m. on Tuesday, July 5, 2022. To register, please complete the participant registration form at <https://forms.gle/DKdxExuwnr1cQ53v6>. To register to speak, please indicate “yes” you want to provide verbal comments on the record when you register with the previously provided link. A confirmation e-mail will be sent with information on how to join the public hearing. If you do not have internet access and want to register, please contact Sandie Adkins or Stephanie Hammonds at (304) 926-0475. Registration for the online hearing is required to fulfill the state’s obligation under federal air quality regulations to document the list of participants.

If you wish to speak at the public hearing, verbal testimony is limited to 5 minutes for each witness. If participating virtually, video demonstrations and screen sharing by witnesses is not permitted.

Affidavit of Legal Publication and Posting

STATE OF WEST VIRGINIA

COUNTY OF Kanawha, TO-WIT

I Janice Alston, Classified Advertising

Representative of the The Charleston Gazette-Mail, a newspaper

published in the county of Kanawha, West Virginia, hereby

certify that the annexed publication was inserted in said

newspaper **The Charleston Gazette-Mail.**

The cost of publishing said annexed advertisement

as aforesaid was \$ 143.78

Commencing On: 06/03/2022

Ending On: 06/03/2022

Given under my hand this day 06/03/2022

Sworn to and subscribed before me 06/03/2022

at Charleston, Kanawha County, West Virginia

Mary C. Smith

Notary Public of, in and for Kanawha County, West Virginia

MY COMMISSION EXPIRES: 6-16-24

[Signature]



PUBLIC NOTICE

**West Virginia
Department of
Environmental
Protection
Division of Air Quality**

Comment Period

Opens:
June 3, 2022

Comment Period

Closes:
July 5, 2022

Publication:

Charleston Gazette-Mail
and West Virginia State
Register Publication

Date: June 3, 2022

Type of Notice:

Public Comment Period
and Public Hearing

Location: Statewide

Proposed Activity:

DAQ 2023 Legislative
Rules

Project Description:

The DAQ proposed
2023 legislative rules
include:

45CSR16
(Standards of Performance
for New Stationary
Sources)

45CSR22
(Air Quality Management
Fee Program)

45CSR30
(Requirements for Operating Permits)

45CSR34
(Emission Standards for
Hazardous Air Pollutants)

45CSR40
(Control of Ozone Season Nitrogen Oxides
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The proposed rules are available at:

- the Secretary of State's website at <http://apps.sos.wv.gov/adla/w/csr/>,
 - the DEP website at <http://www.dep.wv.gov/pic/Pages/Rules.aspx>, or
 - the DAQ website at <https://dep.wv.gov/daq/publicnoticeandcomment/Pages/default.aspx>
- If you do not have internet capability, please contact DAQ for

Point of Contact:

Laura Jennings
(laura.m.jennings@
wv.gov
or 304 926 0475)

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LC 130021
06/03/2022



WEST VIRGINIA REGISTER

Published by the Office of the
Secretary of State

Volume XXXIX

Issue 22

June 3, 2022

A Weekly Publication

Administrative Law Division

Mac Warner
Secretary of State
Bldg. 1, Suite 157K
1900 Kanawha Blvd. East
Charleston, WV 25305-0770

(304) 558-6000

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CONTENTS

Chronological Index

Rule Monitor

Notices

- a. Legislative Rules
- b. Interpretive Rules
- c. Procedural Rules
- d. Emergency Rules
- e. LRMRC and LOCEA

Legislative Interims

Orders

Ethics Commission Opinions

Grievances Reports

Office of Tax Appeal Decisions

Governor's Executive Orders

Attorney General Opinions

Other Documents or Information Filed

CHRONOLOGICAL INDEX, VOLUME XXXIX ISSUE 22

RULES FILED FOR PUBLIC COMMENT THIS WEEK			
<u>AGENCY</u>	<u>RULE/TYPE</u>	<u>AUTHORITY</u>	<u>HEARING/COMMENT PERIOD/LOCATION</u>
Agriculture (61-02)	WV Apiary Law Legislative	§§19-13-3, 19-19-4	Written Comments Only July 2, 2022, 12:00 pm Jodee Martin WV Dept. of Agriculture 1900 Kanawha Boulevard, East Charleston, WV 25305 rulescomments@wvda.us
Agriculture (61-31)	Livestock Care Standards Legislative	§19-1C-4(c)	Written Comments Only July 2, 2022, 12:00 pm Jodee Martin WV Dept. of Agriculture 1900 Kanawha Boulevard, East Charleston, WV 25305 rulescomments@wvda.us
Air Quality (45-16)	Standards of Performance for New Stationary Sources Legislative	§22-5-4	Public Hearing: July 5, 2022, 6:00 pm Virtual. Register by 5:00 pm 7/5/2022 by Calling (304) 926-0475 Written Comments: July 5, 2022, 5:00 pm Sandra Adkins WV DEP, DAQ 601 57 th Street, SE Charleston, WV 25304 laura.m.jennings@wv.gov
Air Quality (45-22)	Air Quality Management Fee Program Legislative	§22-5-4	Public Hearing: July 5, 2022, 6:00 pm Virtual. Register by 5:00 pm 7/5/2022 by Calling (304) 926-0475 Written Comments: July 5, 2022, 5:00 pm Sandra Adkins WV DEP, DAQ 601 57 th Street, SE Charleston, WV 25304 laura.m.jennings@wv.gov

Air Quality (45-30)	Requirements for Operating Permits Legislative	§22-5-4	Public Hearing: July 5, 2022, 6:00 pm Virtual. Register by 5:00 pm 7/5/2022 by Calling (304) 926-0475 Written Comments: July 5, 2022, 5:00 pm Sandra Adkins WV DEP, DAQ 601 57 th Street, SE Charleston, WV 25304 laura.m.jennings@wv.gov
Air Quality (45-34)	Emission Standards for Hazardous Air Pollutants Legislative	§22-5-4	Public Hearing: July 5, 2022, 6:00 pm Virtual. Register by 5:00 pm 7/5/2022 by Calling (304) 926-0475 Written Comments: July 5, 2022, 5:00 pm Sandra Adkins WV DEP, DAQ 601 57 th Street, SE Charleston, WV 25304 laura.m.jennings@wv.gov
Air Quality (45-40)	Control of Ozone Season Nitrogen Oxides Emissions Legislative	§22-5-4	Public Hearing: July 5, 2022, 6:00 pm Virtual. Register by 5:00 pm 7/5/2022 by Calling (304) 926-0475 Written Comments: July 5, 2022, 5:00 pm Sandra Adkins WV DEP, DAQ 601 57 th Street, SE Charleston, WV 25304 laura.m.jennings@wv.gov
Insurance Commission (114-11B)	Suitability in Annuity Transactions Legislative	§§33-2-10, 33-11-6	Written Comments Only July 5, 2022, 5:00 pm Erin K. Hunter 900 Pennsylvania Ave., 9 th Floor Charleston, WV 25302 erin.k.hunter@wv.gov

RULE MONITOR									
AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
Accountancy (1-01)	Board Rules and Rules of Professional Conduct Legislative	5/12/2022	7/1/2022						
Agriculture (61-02)	WV Apiary Law Legislative	6/2/2022	7/2/2022						
Agriculture (61-08B)	Schedule of Charges for Inspection Services: Fruit Legislative	4/12/2022	5/11/2022		5/12/2022				
Agriculture (61-14A)	Rules Dealing with Noxious Weeds Legislative	3/30/2022 Hearing Notice 5/5/2022	4/29/2022 Hearing Date 6/9/2022						
Agriculture (61-31)	Livestock Care Standards Legislative	6/2/2022	7/2/2022						
Agriculture (61-36)	Farm to Food Bank Tax Credit Legislative	4/18/2022	5/18/2022		5/18/2022				
Air Quality (45-16)	Standards of Performance for New Stationary Sources Legislative	6/1/2022	7/5/2022						
Air Quality (45-22)	Air Quality Management Fee Program Legislative	6/1/2022	7/5/2022						
Air Quality (45-30)	Requirements for Operating Permits Legislative	6/1/2022	7/5/2022						
Air Quality (45-34)	Emission Standards for Hazardous Air Pollutants Legislative	6/1/2022	7/5/2022						
Air Quality (45-40)	Control of Ozone Season Nitrogen Oxides Emissions Legislative	6/1/2022	7/5/2022						
Alcohol Beverage Control Comm. (175-02)	Private Club Licensing Legislative	6/1/2021	7/1/2021		7/27/2021	Modified & Approved 12/8/2021 Filed 12/20/2021	Bundled SB312		
Alcohol Beverage Control Comm. – Beer (176-01)	Nonintoxicating Beer Licensing and Operations Procedures Legislative	6/1/2021	7/1/2021		7/28/2021	Modified & Approved 12/8/2021 Filed 12/20/2021	Bundled SB312		

**WEST VIRGINIA SECRETARY OF STATE****MAC WARNER****ADMINISTRATIVE LAW DIVISION****eFILED**

6/1/2022 10:35:02 AM

Office of West Virginia
Secretary Of State**WEST VIRGINIA SECRETARY OF STATE****MAC WARNER****ADMINISTRATIVE LAW DIVISION****eFILED**

6/1/2022 10:39:54 AM

Office of West Virginia
Secretary Of State**LEGISLATIVE****NOTICE OF PUBLIC COMMENT PERIOD**

AGENCY: Air Quality TITLE-SERIES: 45-16
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: Standards of Performance for New Stationary Sources

CITE STATUTORY AUTHORITY: W. Va. Code § 22-5-4

COMMENTS LIMITED TO:

Oral and Written

DATE OF PUBLIC HEARING: 07/05/2022 6:00 PM

LOCATION OF PUBLIC HEARING:

Virtual. Register by 5:00pm 7/5/22 at <https://forms.gle/DKdxExuwnr1cQ53v6> or by calling Sandie Adkins or Stephanie Hammonds at (304)926-0475.

DATE WRITTEN COMMENT PERIOD ENDS: 07/05/2022 5:00 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: Sandra Adkins

ADDRESS: WV Department of Environmental Protection, DAQ

601 57th Street, SE Charleston WV 25304

EMAIL: laura.m.jennings@wv.gov

PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: Yes

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

NOTICE OF PUBLIC COMMENT PERIOD

AGENCY: Air Quality TITLE-SERIES: 45-22
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: Air Quality Management Fee Program

CITE STATUTORY AUTHORITY: W. Va. Code § 22-5-4

COMMENTS LIMITED TO:

Oral and Written

DATE OF PUBLIC HEARING: 07/05/2022 6:00 PM

LOCATION OF PUBLIC HEARING:

Virtual. Register by 5:00pm 7/5/22 at <https://forms.gle/DKdxExuwnr1cQ53v6> or by calling Sandie Adkins or Stephanie Hammonds at (304)926-0475.

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EMAIL: laura.m.jennings@wv.gov

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RELEVANT FEDERAL STATUTES OR REGULATIONS: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)



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6/1/2022 10:56:51 AM

Office of West Virginia
Secretary Of State



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

eFILED

6/1/2022 10:59:36 AM

Office of West Virginia
Secretary Of State

LEGISLATIVE

NOTICE OF PUBLIC COMMENT PERIOD

AGENCY: Air Quality TITLE-SERIES: 45-30
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: Requirements for Operating Permits

CITE STATUTORY AUTHORITY: W. Va. Code § 22-5-4

COMMENTS LIMITED TO:

Oral and Written

DATE OF PUBLIC HEARING: 07/05/2022 6:00 PM

LOCATION OF PUBLIC HEARING:

Virtual. Register by 5:00pm 7/5/22 at <https://forms.gle/DKdxExuwnr1cQ53v6> or by calling Sandie Adkins or Stephanie Hammonds at (304)926-0475.

DATE WRITTEN COMMENT PERIOD ENDS: 07/05/2022 5:00 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: Sandra Adkins

ADDRESS: WV Department of Environmental Protection, DAQ
601 57th Street, SE Charleston WV 25304

EMAIL: laura.m.jennings@wv.gov

PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: Yes

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

NOTICE OF PUBLIC COMMENT PERIOD

AGENCY: Air Quality TITLE-SERIES: 45-34
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: Emission Standards for Hazardous Air Pollutants

CITE STATUTORY AUTHORITY: W. Va. Code § 22-5-4

COMMENTS LIMITED TO:

Oral and Written

DATE OF PUBLIC HEARING: 07/05/2022 6:00 PM

LOCATION OF PUBLIC HEARING:

Virtual. Register by 5:00pm 7/5/22 at <https://forms.gle/DKdxExuwnr1cQ53v6> or by calling Sandie Adkins or Stephanie Hammonds at (304)926-0475.

DATE WRITTEN COMMENT PERIOD ENDS: 07/05/2022 5:00 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: Sandra Adkins

ADDRESS: WV Department of Environmental Protection, DAQ
601 57th Street, SE Charleston WV 25304

EMAIL: laura.m.jennings@wv.gov

PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: Yes

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

eFILED

6/1/2022 11:02:42 AM

Office of West Virginia
Secretary Of State



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

eFILED

6/2/2022 1:32 PM

Office of West Virginia
Secretary Of State

LEGISLATIVE

NOTICE OF PUBLIC COMMENT PERIOD

AGENCY: Air Quality TITLE-SERIES: 45-40
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: Control of Ozone Season Nitrogen Oxides Emissions
CITE STATUTORY AUTHORITY: W. Va. Code § 22-5-4

COMMENTS LIMITED TO:

Oral and Written

DATE OF PUBLIC HEARING: 07/05/2022 6:00 PM

LOCATION OF PUBLIC HEARING:

Virtual. Register by 5:00pm 7/5/22 at <https://forms.gle/DKdxExuwnr1cQ53v6> or by calling Sandie Adkins or Stephanie Hammonds at (304)928-0475.

DATE WRITTEN COMMENT PERIOD ENDS: 07/05/2022 5:00 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: Sandra Adkins
ADDRESS: WV Department of Environmental Protection, DAQ
601 57th Street, SE Charleston WV 25304
EMAIL: laura.m.jennings@wv.gov

PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: Yes

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

NOTICE OF TECHNICAL AMENDMENT

AGENCY: Health TITLE-SERIES: 64-07
RULE TYPE: Legislative
RULE NAME: REPORTABLE DISEASES, EVENTS AND CONDITIONS
CITE STATUTORY AUTHORITY: 16-3-1

LIST WITH DETAIL EACH SPECIFIC CHANGE MADE TO THE RULE AND WHERE IT CAN BE FOUND:

At paragraph 3.5.d.7. SARS-CoV-2 is added and the remaining paragraphs renumbered; and
At paragraph 3.6.d.14. Streptococcus, Group B, from a normally sterile site is deleted and the remaining paragraphs renumbered.

FILING DATE: 06/02/2022

EFFECTIVE DATE: 06/02/2022

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

April L Robertson -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

Public Notice

west virginia **dep** department of environmental protection

Page 1 of 2

Public Notice

West Virginia Department of Environmental Protection Division of Air Quality

Comment Period Opens: June 3, 2022
Comment Period Closes: July 5, 2022

Publication: Charleston Newspapers and West Virginia State Register
Publication Date: June 3, 2022

Type of Notice: Public Comment Period and Public Hearing

Location: Statewide

Proposed Activity: DAQ 2023 Legislative Rules

Project Description: The DAQ proposed 2023 legislative rules include:

- 45CSR16 (Standards of Performance for New Stationary Sources)
- 45CSR22 (Air Quality Management Fee Program)
- 45CSR30 (Requirements for Operating Permits)
- 45CSR34 (Emission Standards for Hazardous Air Pollutants)
- 45CSR40 (Control of Ozone Season Nitrogen Oxides Emissions)

Upon authorization and promulgation of the final rules, 45CSR16, 45CSR30, and 45CSR34 will be submitted to the United States Environmental Protection Agency (EPA) to fulfill federal obligations under the Clean Air Act (CAA), including delegations and authorizations. Upon authorization and promulgation, 45CSR40 will be submitted to EPA for approval as a revision to the State Implementation Plan (SIP) pursuant to the federal CAA. Upon authorization and promulgation, 45CSR22 will be a state only rule, with no further action.

The proposed rules are available at:

- the Secretary of State's website at <http://apps.sos.wv.gov/adlaw/csr/>,
- the DEP website at <http://www.dep.wv.gov/pio/Pages/Rules.aspx>, or
- the DAQ website at <https://dep.wv.gov/daq/publicnoticeandcomment/Pages/default.aspx>.

"Promoting a healthy environment"

Page 2 of 2

OTHER

- If you do not have internet capability, please contact DAQ for alternatives.

Point of Contact: Laura Jennings (laura.m.jennings@wv.gov or 304-926-0475)

The DEP is holding the public hearing virtually. Instructions for participating and providing verbal comments are provided below. Both verbal and written comments will be made part of the official rulemaking record.

Written comments may be submitted at any time during the public comment period as instructed below. Written comments must be received by 5:00 pm on July 5. Written comments received after 5:00 pm on July 5 will not be accepted.

Written Comments:

- E-mail written comments to Laura.M.Jennings@wv.gov with "Proposed DAQ 2023 Rule Comments" in the subject line, or
- Mail hard copy comments to the attention of Sandra Adkins at the WV Department of Environmental Protection, Division of Air Quality, 601 57th Street SE, Charleston, WV 25304.

Public Hearing: July 5, 2022 at 6:00 p.m.

The purpose of the public hearing is to receive comments concerning the proposed DAQ 2023 legislative rules identified above. A Response to Comments document will be prepared as part of the rulemaking process. A separate hearing will be held for each of the proposed rules. The hearings will be held sequentially and will commence immediately following the conclusion of the hearing for the previous proposed rule.

To participate online or by telephone, registration is required by 5:00 p.m. on Tuesday, July 5, 2022. To register, please complete the participant registration form at <https://forms.gle/DKdxExuwnrlcQ53v6>. To register to speak, please indicate "yes" you want to provide verbal comments on the record when you register with the previously provided link. A confirmation e-mail will be sent with information on how to join the public hearing. If you do not have internet access and want to register, please contact Sandie Adkins or Stephanie Hammonds at (304) 926-0475. Registration for the online hearing is required to fulfill the state's obligation under federal air quality regulations to document the list of participants.

If you wish to speak at the public hearing, verbal testimony is limited to 5 minutes for each witness. If participating virtually, video demonstrations and screen sharing by witnesses is not permitted.

Public Notice Archives

DEP Enhanced Mailing List - View List Message

This Message was sent out on Friday, June 3, 2022 @ 04:08 PM

From: dep.online@wv.gov
Subject: DEP Public Notice - Division of Air Quality - Public Comment Period and Public Hearing for 2023 Proposed Legislative Rules

Public Notice

West Virginia Department of Environmental Protection Division of Air Quality

Comment Period Opens: June 3, 2022
 Comment Period Closes: July 5, 2022

Publication: Charleston Newspapers and West Virginia State Register

Publication Date: June 3, 2022

Type of Notice: Public Comment Period and Public Hearing

Location: Statewide

Proposed Activity: DAQ 2023 Legislative Rules

Project Description: The DAQ proposed 2023 legislative rules include:

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 45CSR22 (Air Quality Management Fee Program)
 45CSR30 (Requirements for Operating Permits)
 45CSR34 (Emission Standards for Hazardous Air Pollutants)
 45CSR40 (Control of Ozone Season Nitrogen Oxides Emissions)

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The proposed rules are available at:

- the Secretary of State's website at <https://apps.sos.wv.gov/adlaw/csr/>,
 - the DEP website at <https://www.dep.wv.gov/pio/Pages/Rules.aspx>, or
 - the DAQ website at <https://dep.wv.gov/daq/publicnoticeandcomment/Pages/default.aspx>.
- If you do not have internet capability, please contact DAQ for alternatives.

Point of Contact: Laura Jennings (laura.m.jennings@wv.gov or 304-926-0475)

The DEP is holding the public hearing virtually. Instructions for participating and providing verbal comments are provided below. Both verbal and written comments will be made part of the official rulemaking record.

Written comments may be submitted at any time during the public comment period as instructed below. Written comments must be received by 5:00 pm on July 5. Written comments received after 5:00 pm on July 5 will not be accepted.

Appendix A

Page 122 of 171

Written Comments:

- E-mail written comments to Laura.M.Jennings@wv.gov with "Proposed DAQ 2023 Rule Comments" in the subject line, or
- Mail hard copy comments to the attention of Sandra Adkins at the WV Department of Environmental Protection, Division of Air Quality, 601 57th Street SE, Charleston, WV 25304.

Public Hearing: July 5, 2022 at 6:00 p.m.

The purpose of the public hearing is to receive comments concerning the proposed DAQ 2023 legislative rules identified above. A Response to Comments document will be prepared as part of the rulemaking process. A separate hearing will be held for each of the proposed rules. The hearings will be held sequentially and will commence immediately following the conclusion of the hearing for the previous proposed rule.

To participate online or by telephone, registration is required by 5:00 p.m. on Tuesday, July 5, 2022. To register, please complete the participant registration form at <https://forms.gle/DKdxExuwnr1cQ53v6>. To register to speak, please indicate "yes" you want to provide verbal comments on the record when you register with the previously provided link. A confirmation e-mail will be sent with information on how to join the public hearing. If you do not have internet access and want to register, please contact Sandie Adkins or Stephanie Hammonds at (304) 926-0475. Registration for the online hearing is required to fulfill the state's obligation under federal air quality regulations to document the list of participants.

If you wish to speak at the public hearing, verbal testimony is limited to 5 minutes for each witness. If participating virtually, video demonstrations and screen sharing by witnesses is not permitted.

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DEPARTMENT OF ENVIRONMENTAL PROTECTION, DIVISION OF AIR QUALITY							
PUBLIC HEARING PARTICIPANTS - PROPOSED LEGISLATIVE RULES (2023 LEGISLATIVE SESSION)							
July 5, 2022 - 6:00 PM							
Held remotely via Google Meet							
Registration Timestamp	First name	Last name	Email address	Organization (if not affiliated with a group, type "Self")	Street address	City, state and zip code	If you wish to provide oral comments on the record, please check which proposed rule?
6/14/2022 13:16:47	Joseph	Unger	junger@spilmanlaw.com	Spilman Thomas & Battle	300 Kanawha Blvd., East	Charleston, WV 25301	I do not wish to provide oral comments
7/5/2022 13:55:33	Robert	Keatley	Robert.L.Keatley@DuPont.com	DuPont Specialty Products USA, LLC	8480 DuPont Road	Washington, 26181	I do not wish to provide oral comments
7/5/2022 16:41:25	James	Kotcon	jkotcon@gmail.com	West Virginia Chapter of Sierra Club	414 Tyrone Avery Road	Morgantown	45CSR16 (Standards of Performance for New Stationary Sources), 45CSR22 (Air Quality Management Fee Program), 45CSR30 (Requirements for Operating Permits), 45CSR34 (Emission Standards for Hazardous Air Pollutants), 45CSR40 (Control of Ozone Season Nitrogen Oxides Emissions)
n/a	Adkins	Sandra	n/a	West Virginia Department of Environmental Protection	n/a	n/a	n/a
n/a	Fletcher	Terry	n/a	West Virginia Department of Environmental Protection	n/a	n/a	n/a
n/a	Hammonds	Stephanie	n/a	West Virginia Department of Environmental Protection	n/a	n/a	n/a
n/a	Jennings	Laura	n/a	West Virginia Department of Environmental Protection	n/a	n/a	n/a

45CSR40
CONTROL OF OZONE SEASON NITROGEN OXIDES EMISSION
RESPONSE TO COMMENTS

The WV Department of Environmental Protection (DEP), Division of Air Quality (DAQ) commenced the public comment period for proposed legislative rule 45CSR40 on June 3, 2022. The public comment period concluded July 5, 2022, after satisfying the 30-day period. A public hearing was held virtually on July 5, 2022. The purpose of the public comment period and hearing was to accept oral and written comments on the proposed revisions to 45CSR40.

There were not any written comments received during the public comment period regarding proposed revisions to 45CSR40. One person provided oral comments during the public hearing. A summary of the comment along with the response is provided below. The public hearing transcript is provided as part of the formal rulemaking record. The hearing for 45CSR40 begins on page 23 of the transcript.

There were no changes made to 45CSR40 as a result of the comments.

Commenter: James Kotcon, Conservation Chair, WV Chapter of Sierra Club

COMMENT: We support the routine update. I would also add that having followed ozone levels in West Virginia for many years, air quality is improving fairly significantly, and I urge DEP to keep up the good work. Obviously, we can do more but we are definitely headed in the right direction.

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

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DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF AIR QUALITY

PUBLIC HEARING
PROPOSED 2023 LEGISLATIVE RULES

July 5, 2022 6:00 P.M.
Held Remotely via Google Meet

In Attendance:

Stephanie Hammonds
Laura Jennings
Terry Fletcher
Sandra Adkins

Realtime Reporters, LLC
schedulingrealtime@gmail.com 304-344-8463

1 CONTENTS

2 LEGISLATIVE RULES

3		PAGE
4	45CSR16 - Standards of Performance for New Stationary Sources	5
5	45CSR22 - Air Quality Management Fee Program	9
6	45CSR30 - Requirements for Operating Permits	13
7	45CSR34 - Emission Standards for Hazardous Air Pollutants	20
8		
9	45CSR40 - Control of Ozone Season Nitrogen Oxides Emissions	22

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PROCEEDINGS

MR. FLETCHER: Good evening, everyone. Thank you for participating in the public hearings this evening. My name is Terry Fletcher. I am the Chief Communications Officer with the West Virginia Department of Environmental Protection.

I want to welcome everyone to the public hearings for the Division of Air Quality's Five Proposed Rules for the upcoming 2023 West Virginia legislative session. There will be a separate public hearing for each of the five DAQ proposed rules.

The hearings will be held sequentially and will commence immediately following the conclusion of the hearing for the previous proposed rule.

With me this evening from the Division of Air Quality are Stephanie Hammonds, an Environmental Resource Specialist with the Compliance and Enforcement Section; and Laura Jennings, a Technical Analyst with the Planning Section. Court reporter Kristina Guthrie is also participating this evening.

The purpose of each of the public hearings is to receive public comments on the record regarding each of the proposed DAQ rules. Each public hearing is being recorded and a court reporter is in attendance to meet

1 Clean Air Act requirements and to consider comments in
2 the rulemaking process.

3 Because the purpose of the public hearing is
4 to listen to your comments, it is not a forum to engage
5 the DAQ in open discussion or debate about the proposed
6 rules. Unlike a public meeting, the DAQ will not be
7 responding to questions during the hearing. All
8 comments received will be addressed in a response to
9 comment document that will be part of the official rule
10 making record made available on the Secretary of State's
11 website.

12 All participants have been muted upon entry
13 into the meeting to ensure we are not interrupting
14 others or talking over one another. Participants were
15 asked to pre-register to speak and will be called upon
16 by Stephanie Hammonds when it is their turn to provide
17 their comments.

18 When called upon, you will be unmuted and told
19 to go ahead with your comments. Please clearly state
20 your name and indicate if you are representing any
21 groups or organizations and we ask that you limit your
22 comments to five minutes.

23 Please specify when your comment is finished
24 so we can re-mute you and if you did not pre-register as

1 a speaker but would like to speak, please use the raise
2 hand feature in Google Meets.

3 As a reminder, video demonstrations and screen
4 sharing by witnesses is not permitted. The chat feature
5 in Google Meets will be monitored during the public
6 hearing to assist with any technical issues.

7 We ask that everyone be respectful and
8 considerate of each other by refraining from using foul
9 language and from name calling, interrupting others
10 while they are speaking, and we ask that everyone keep
11 their comments on the topic of the proposed rules so
12 that our time together is used efficiently.

13 All that being said, I am now turning this
14 over to Laura Jennings with the Division of Air Quality.
15 Laura?

16 MS. JENNINGS: Thanks, Terry. Is the court
17 reporter ready?

18 COURT REPORTER: Yes, ma'am. Thank you.

19 45CSR16

20 Standards of Performance for New Stationary Sources

21 Also In Attendance: Joseph Unger, James Kotcon

22 MS. JENNINGS: Okay. Thank you. Okay. Our
23 first hearing this evening is for 45CSR16 (Standards of
24 Performance for New Stationary Sources). The virtual

1 public hearing for the proposed legislative Rule 45CSR16
2 - Standards of Performance for New Stationary Sources
3 will now come to order on this 5th day of July, 2022.

4 Oral comments and testimony will be accepted
5 until the close of this hearing and will be made part of
6 the rulemaking record. Any questions regarding
7 revisions to the rules should be included with your
8 comments, and any such question will be addressed as
9 part of the response to comments in the rulemaking
10 record.

11 The purpose of this public hearing is to
12 accept comments on proposed revisions to Rule 45CSR16 -
13 Standards of Performance for New Stationary Sources.
14 This rule establishes and adopts national standards of
15 performance for new stationary sources and other
16 regulatory requirements promulgated by the United States
17 Environmental Protection Agency pursuant to Section
18 111(b) of the Federal Clean Air Act.

19 This rule codifies general procedures and
20 criteria to implement standards of performance for new
21 stationary sources set forth in 40CFR Part 60. The rule
22 also adopts associated appendices, reference methods,
23 performance specifications and other test methods which
24 are appended to such standards.

1 Revisions to this rule are necessary to
2 maintain consistency with current federal regulations,
3 and for the State to fulfill its responsibilities under
4 the Clean Air Act and enable the West Virginia
5 Department of Environmental Protection to continue to be
6 the primary enforcement authority for such national
7 standards promulgated by the U.S. EPA.

8 Revisions to the rule include the annual
9 incorporation by reference of the Federal regulations as
10 of June 1, 2022. Upon authorization and promulgation of
11 45CSR16, the rule will be submitted to the U.S. EPA to
12 fulfill delegation obligations in accordance with the
13 Federal Clean Air Act.

14 The floor is now open for comments. As a
15 reminder, please keep your comments on topic and limit
16 them to five minutes.

17 Stephanie, has anyone pre-registered to
18 provide comments on proposed rule 45CSR16? If so,
19 please unmute their line & call on them now.

20 MS. HAMMONDS: Thanks, Laura and good evening,
21 everyone. We had one person who registered to provided
22 comments and that's Jim Kotcon. Mr. Kotcon, you can go
23 ahead with your comments, please.

24 MR. KOTCON: My name is Jim Kotcon. I serve

1 as the Conversation Chair for the West Virginia Chapter
2 of Sierra Club. I did in fact request an opportunity to
3 speak to each of the rules because while I normally
4 would be submitted written comments, I have not had a
5 chance to do that yet and that period has elapsed.

6 At this point, my only comments on Reg 16 is
7 that we certainly support any upgrades and approve the
8 rule or support the rule as submitted and hope that it
9 is adopted. Thank you.

10 MS. HAMMONDS: Thank you, Mr. Kotcon. Now, if
11 anyone did not pre-register to comment but would like to
12 do so now, please use the raise your hand feature.

13 Okay, Laura. I don't see any hands raised.

14 MS. JENNINGS: Okay, thanks, Stephanie.

15 MS. HAMMONDS: Thank you.

16 MS. JENNINGS: There being nothing further,
17 this public hearing for proposed rule 45CSR16 is
18 concluded. The public hearing for proposed rule 45CSR22
19 will begin momentarily.

20 Kristina, are you ready to proceed?

21 Okay.

22 COURT REPORTER: Yes, ma'am. Thank you.

23 MS. JENNINGS: Thank you. Okay.

24 45CSR22

1 Air Quality Management Fee Program

2 Also In Attendance: Joseph Unger, James Kotcon

3 MS. JENNINGS: The virtual public hearing for
4 proposed Legislative Rule 45CSR22 (Air Quality
5 Management Fee Program) will now come to order on this
6 5th day of July, 2022.

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

14 The purpose of this public hearing is to
15 accept comments on proposed revisions to Rule 45CSR22 -
16 Air Quality Management Fee Program. This rule
17 establishes a program to collect fees for Certificates
18 to Operate (CTO) and for permits to construct, modify or
19 relocate sources of statutory air pollution in
20 accordance with 45CSR13, 14 and 19.

21 All sources subject to air emission rules
22 promulgated under Title 45, including air permit or
23 registration requirements, are subject to this rule.
24 The fees collected under this rule fund the Division of

1 Air Quality's non-Title V program budget to maintain an
2 effective air quality management program.

3 Revisions to the rule generally include
4 updating the rule and increasing the fees since the rule
5 was last revised over 30 years ago. Upon authorization
6 and promulgation, there is no further action required
7 for the state-only Rule 45CSR22.

8 The floor is now open for comments. As a
9 reminder, please keep your comments on topic and limit
10 them to five minutes.

11 Stephanie, has anyone pre-registered to
12 provide comments on proposed rule 45CSR22? If so,
13 please unmute their line and call on them now.

14 MS. HAMMONDS: Thanks, Laura. We had one
15 person register to comment, Mr. Kotcon. You can go
16 ahead with your comments, please.

17 MR. KOTCON: Thank you. I do have a few
18 comments on 45CSR22. With respect to Section 1.1, one
19 of the amendments that's being proposed is to add the
20 word "statutory" to air pollution. The definition of
21 statutory in Section 2.17 refers to Reg 13 where it has
22 a very broad and inclusive definition. I think this is
23 an important addition and very much support adding that
24 to this section.

1 Second, you define in Section 1.5 the Sunset
2 Provision and state that it does not apply. While that
3 may seem to me at least as a little bit redundant, it is
4 clear that that Sunset Provision should not apply to
5 this rule. So long ago I was given the advice if given
6 the choice between confusion and redundancy, pick
7 redundancy. This seems a little redundant but it's fine
8 with me.

9 On a broader topic, Section 3.3 identifies fee
10 increases, especially those in Table 45CSR22(a) and
11 22(b). We would certainly support those fee increases
12 with the proviso that fees on these permits should fully
13 reimburse the agency for the actual cost of reviewing
14 those permit applications.

15 In particular, it is not clear that the
16 proposed fee for the 111(b) requirements would be
17 adequate to meet and fully reimburse the agency for the
18 cost of those and I would encourage you to review that
19 and be able to fully justify that.

20 Finally, with respect to Section 4.3(e), this
21 establishes a Consumer Price Index riser. I think that
22 that riser is a reasonable and prudent approach. It is
23 certainly a useful and necessary business practice for
24 any other business that I've run across and it would

1 help DEP avoid the need to revise these permit fees to
2 meet up with the cost of inflation.

3 As I think everyone is well aware, inflation
4 has been rising dramatically for the last year or two
5 and that has left the agency in a difficult position and
6 so we would fully support both that fee increase and the
7 Consumer Price Index riser.

8 My only recommendation is that as that riser
9 adjusts the fees on an annual basis, it might be helpful
10 if DEP were to publish annually on their web page or
11 elsewhere a table listing the current fees with that
12 consumer price index riser.

13 Having the actual number would avoid any
14 confusion on the part of the regulated community as to
15 what the fee should be and it wouldn't necessarily have
16 to be a rule modification each year but it would be very
17 helpful to the regulated community.

18 So with that and those minor modifications, I
19 certainly would support the rule. Thank you.

20 MS. HAMMONDS: Thank you, Mr. Kotcon.

21 If anyone did not pre-register to comment but
22 would like to do so now, please use the raise hand
23 feature.

24 Okay, Laura, I don't see anyone.

1 MS. JENNINGS: Okay. Thank you, Stephanie.
2 There being nothing further, this public hearing for
3 proposed Rule 45CSR22 is concluded. The public hearing
4 for proposed Rule 45CSR30 will begin momentarily.

5 Is the court reporter ready to proceed to the
6 next hearing?

7 COURT REPORTER: I am. Thank you.

8 45CSR30

9 Requirements for Operating Permits

10 Also In Attendance: James Kotcon, Joseph Unger, Robert
11 Keatly

12 MS. JENNINGS: Okay. Thank you. The virtual
13 public hearing for the proposed legislative Rule 45CSR30
14 (Requirements for Operating Permits) will now come to
15 order on this 5th day of July, 2022.

16 Oral comments and testimony will be accepted
17 until the close of this hearing and will be made part of
18 the rulemaking record. Any questions regarding
19 revisions to the rules should be included with your
20 comments, and any such question will be addressed as
21 part of the response to comments in the rulemaking
22 record.

23 The purpose of this public hearing is to
24 accept comments on proposed revisions to Rule 45CSR30 -
Requirements for Operating Permits. This rule provides

1 for the establishment of a comprehensive air quality
2 permitting system consistent with the requirements of
3 Title V of the Clean Air Act and the state operating
4 permit program requirements of 40CFR Part 70.

5 The rule establishes: The obligation for a
6 source to obtain a Title V operating permit;
7 applicability for other sources, including exemptions
8 and deferred sources; permit application, content,
9 issuance, renewal, reopening, revision, review,
10 suspension, modification, revocation and reissuance
11 requirements; and Title V fee requirements.

12 All fees collected pursuant to this rule shall
13 be expended solely to cover all reasonable direct and
14 indirect costs required to administer the Title V
15 operating permit program and accounted for in accordance
16 with this rule.

17 There are three main purposes for revising the
18 rule. First, the fee structure is being revised as
19 recommended by the U.S. EPA. Federal regulations
20 require that fees from Title V sources are sufficient to
21 sustainably cover the Title V program costs.

22 Currently, the fee structure is based solely
23 on the amount of pollutants emitted by a source. The
24 proposed fee is being re-structured for diversification

1 and sustainability. The proposed fee will continue to
2 include an emissions component; however, it will also
3 include a base fee component and a complexity fee
4 component.

5 Second, the rule is being revised to comport
6 with federal counterpart regulations.

7 Lastly, obsolete transitional language is
8 being removed and clarifications are being made.

9 Upon authorization and promulgation of
10 45CSR30, the rule will be submitted to the U.S. EPA to
11 fulfill obligations under the Federal Clean Air Act.

12 The floor is now open for comments. As a
13 reminder, please keep your comments on topic and limit
14 them to five minutes. Stephanie, has anyone
15 pre-registered to provide comments on proposed Rule
16 45CSR30? If so, please unmute their line and call on
17 them now.

18 MS. HAMMONDS: Thanks, Laura. We had one
19 person register, Mr. Kotcon. If you would like to go
20 ahead with your comments now.

21 MR. KOTCON: Thank you. Let me start off by
22 saying that my comments on this rule are quite extensive
23 and then I'll be very brief on the remaining rules. I
24 do hope there will be a little bit of flexibility in

1 that time limit.

2 With regard to Section 2.24, the definition
3 for a "hazardous air pollutant" was redefined to match
4 that of the Federal rule and resulting in the deletion
5 of Table 45CSR38. I very much support that change.

6 Having separate lists of what is a hazardous
7 air pollutant leads to confusion, duplication, and it's
8 difficult to keep up with both of those. It will be
9 simpler for the public and for the agency if we simply
10 refer to that list as you have done here, so I support
11 that change.

12 In Section 2.26(a), under Section 2.26(a)(1),
13 there is certainly no need for the sentence striking the
14 reference to Table 4530(a) if that table is deleted. I
15 would also recommend striking the next sentence,
16 Emissions from any oil or gas exploration or a
17 production well and associated equipment and emissions
18 from any pipeline compressor or pump stations shall not
19 be aggregated with the emissions from other similar
20 units, whether or not such units are in a contiguous
21 area under common control, et cetera.

22 That particular new pool allows pipelines and
23 their associated compressor stations to functionally be
24 equivalent to a major source but not have to do the

1 major source reviews. That provides a real benefit to
2 those oil and gas pipeline facilities in avoiding that
3 kind of review but it leaves the public at risk of very
4 significant air pollutants.

5 I reviewed a number of gas pipeline
6 applications where every single compressor station is
7 just below the limit for a major source. You know,
8 instead of 100 percent of a major source, it's 95
9 percent or 98 percent or 97 percent, and there's one
10 after another of these along a major pipeline.

11 It is clear that the industry is designing
12 their compressors and their associated facilities to
13 circumvent the requirement for a major source review,
14 and there are several rule changes that are needed but
15 certainly this is one of those and I recommend striking
16 that last sentence that any stationary source or group
17 of stationary sources located within a contiguous area
18 and under common control should be considered a major
19 source.

20 The second change then is in 2.26 (b) under
21 Subsection 22 where they list petroleum storage and
22 transfer units with a total storage capacity exceeding
23 300,000 barrels would be considered major sources and
24 should consider fugitive remissions.

1 I think a similar exemption or definition
2 using that general capacity would be appropriate such
3 that fugitive remissions from gas facilities would also
4 need to be considered. So I would recommend adding that
5 provision, a new subsection there.

6 With regard to Section 6.(a) 3.(a), 4 and 5,
7 there are a number of deletions there that deal with the
8 public comment. I don't believe that the provision that
9 was added, it gives the secretary a little bit too much
10 discretion to define what is generally accepted methods
11 for who is included and not included in a public mailing
12 list.

13 And it gives the secretary a little bit too
14 much discretion to delete the name of people who failed
15 to respond in an adequate period of time. While I do
16 recognize the need to update the mailing list, I would
17 strongly encourage that there be explicit definitions
18 that would assure the public that they would get this
19 public notice and that this would not be required.

20 Three other suggestions, in Section 7.3, there
21 is a 7.3(b), the final sentence says that a CPA must
22 provide a permit applicant a copy of the objection. I
23 recommend that that sentence be deleted. I don't think
24 a state agency can mandate a requirement of a federal

1 agency.

2 Likewise, in Section 7.4(a), I would like to
3 define what are the unusual circumstances that would
4 preclude or allow the EPA to modify a permit or the
5 secretary to issue that permit. I think that some of
6 those provisions, especially the last section or
7 sentence in 7.4(a) seems to be contradictory and that
8 last sentence, the permittee will not be in violation of
9 any requirements to submit a final and complete
10 application, that could be deleted from that section.

11 I appreciate the change to give these comments
12 and I will be happy to address anything that is unclear
13 in these comments if you have any questions. Thank you.

14 (Following comments were added at the end but
15 placed under the appropriate section 45CSR30
16 by reporter.)

17 MR. FLETCHER: Mr. Kotcon, did you have
18 another comment to add?

19 MR. KOTCON: Yes, thank you. I apologize. I
20 missed a couple of comments on my review of 45CSR30 and
21 I will just mention those.

22 In Section 6.8(a) 4(a) 5, the requirement is
23 added to have contact info for the applicant. It does
24 not, however, assure that that applicant or information,

1 person with information would respond, and I've had some
2 issues with that in the past, specifically with a permit
3 earlier this year from Marion Energy Partners. When we
4 attempted to contact the applicant, you know, that
5 information went into a black hole and I never did get
6 anything back from that company.

7 In Section 6.8(a) 4(a) 3, there is a mandate
8 for a description of the business to be operated. In
9 that case, with Marion Energy Partners, their business
10 description is really overly vague and did not
11 communicate to the public what they were involved with,
12 and so if there is a way to beef up those two sections,
13 I would very much appreciate it because it's led to a
14 lot of controversy up here in Northern county.

15 That's all I have and again, I apologize for
16 not getting the item in the right place.

17 MS. HAMMONDS: Thank you, Mr. Kotcon. So we
18 are at the end of the registered commenters list. If
19 you did not pre-register to provide comment but would
20 like to do so, please use the raise hand option.

21 Okay, Laura, I do not see any hands raised.

22 MS. JENNINGS: Okay. Thank you, Stephanie.
23 There being nothing further, this public hearing for
24 proposed Rule 45CSR30 is concluded. The public hearing

1 for proposed Rule 45CSR34 will begin momentarily.

2 Is the court reporter ready to proceed to the
3 next hearing?

4 COURT REPORTER: Yes, ma'am. Thank you.

5 45CSR34

6 Emission Standards for Hazardous Air Pollutants

7 Also In attendance: James Kotcon, Joseph Unger, Robert
8 Keatly

9 MS. JENNINGS: Okay. Thank you. The virtual
10 public hearing for the proposed legislative Rule 45CSR34
11 (Emission Standards for Hazardous Air Pollutants) will
12 now come to order on this 5th day of July, 2022.

13 Oral comments and testimony will be accepted
14 until the close of this hearing and will be made part of
15 the rulemaking record. Any questions regarding
16 revisions to the rules should be included with your
17 comments, and any such question will be addressed as
18 part of the response to comments in the rulemaking
19 record.

20 The purpose of this public hearing is to
21 accept comments on proposed revisions to Rule 45CSR34 -
22 Emission Standards for Hazardous Air Pollutants. This
23 rule incorporates and adopts national emission standards
24 for hazardous air pollutants and other regulatory

1 requirements promulgated by the United States
2 Environmental Protection Agency pursuant to the Federal
3 Clean Air Act.

4 Promulgation of this rule is necessary for the
5 State to fulfill its responsibilities under the Clean
6 Air Act and will enable the West Virginia Department of
7 Environmental Protection to continue to be the primary
8 enforcement authority for such national emission
9 standards promulgated by the U.S. EPA.

10 Revisions to the rule include the annual
11 incorporation by reference of National Emission
12 Standards for Hazardous Air Pollutants promulgated by
13 the U.S. EPA under 40CFR Parts 61 and 63 as of June 1,
14 2022.

15 Upon authorization and promulgation of
16 45CSR34, the rule will be submitted to the U.S. EPA to
17 fulfill delegation obligations in accordance with the
18 Federal Clean Air Act.

19 The floor is now open for comments. As a
20 reminder, please keep your comments on topic and limit
21 them to five minutes. Stephanie, has anyone
22 pre-registered to provide comments on proposed Rule
23 45CSR34? If so, please unmute their line & call on them
24 now.

1 MS. HAMMONDS: Thank you, Laura. We have one
2 person who registered, Mr. Kotcon.

3 MR. KOTCON: Thank you. I confess that I have
4 not reviewed every last line of the Federal counterpart
5 updates but subject to any advice I might later get from
6 National Sierra Club, we would support the ongoing
7 updates. We think it's a good routine to follow. Thank
8 you.

9 MS. HAMMONDS: Thank you, Mr. Kotcon. Is
10 there anyone who did not register to speak but would
11 like to do so now? Please use the raise hand feature.

12 Laura, I do not see any hands raised.

13 MS. JENNINGS: Okay. Thank you, Stephanie.
14 There being nothing further, this public hearing for
15 proposed Rule 45CSR34 is concluded. The public hearing
16 for proposed Rule 45CSR40 will begin momentarily.

17 Is the court reporter ready to proceed to the
18 next hearing?

19 COURT REPORTER: Yes, ma'am.

20 45CSR40

21 Control of Ozone Season Nitrogen Oxides Emissions

22 Also in attendance: James Kotcon, Joseph Unger, Robert
23 Keatly

24 MS. JENNINGS: Okay, thank you. The virtual

1 public hearing for the proposed legislative Rule 45CSR40
2 (Control of Ozone Season Nitrogen Oxides Emissions) will
3 now come to order on this 5th day of July, 2022.

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

10 The purpose of this public hearing is to
11 accept comments on proposed revisions to Rule 45CSR40 -
12 Control of Ozone Season Nitrogen Oxides Emissions.

13 This rule establishes nitrogen oxides (or NOX)
14 ozone season emission limitation, monitoring,
15 recordkeeping, reporting, excess emissions, and NOX
16 budget demonstration requirements for large industrial
17 boilers and combustion turbines that have a maximum
18 design heat input greater than 250 mmBTU/hr, in
19 accordance with 40CFR 51.121; NOX ozone season emission
20 reduction, compliance plan, monitoring, recordkeeping
21 and reporting requirements for affected stationary
22 internal combustion engines; and NOX ozone season
23 control standards, compliance plan, monitoring,
24 recordkeeping, and reporting requirements for applicable

1 cement manufacturing kilns.

2 The rule is being revised to update the
3 characterization of units that are not subject to this
4 rule because they are subject to a Federal NOX ozone
5 season trading program. Upon authorization and
6 promulgation of 45CSR40, the rule will be submitted to
7 the U.S. EPA to fulfill federal obligations in
8 accordance with the Clean Air Act.

9 The floor is now open for comments. As a
10 reminder, please keep your comments on topic and limit
11 them to five minutes. Stephanie, has anyone
12 pre-registered to provide comments on proposed Rule
13 45CSR40? If so, please unmute their line & call on them
14 now.

15 MS. HAMMONDS: Thank you, Laura. Mr. Kotcon
16 has registered to provide oral comments and Mr. Kotcon,
17 if you'd like to go ahead, please.

18 MR. KOTCON: Thank you. The -- again, I will
19 apologize at not having reviewed the updates on all of
20 those Federal requirements and so subject to any
21 contradiction from National Sierra Club, we would
22 certainly support the routine update.

23 I would also add that having followed ozone
24 levels in West Virginia for many years, air quality is

1 improving fairly significantly and I urge DEP to keep up
2 the good work and, obviously, we can do more but we are
3 definitely heading in the right direction. Thank you.

4 MS. HAMMONDS: Thank you, Mr. Kotcon. If you
5 did not pre-register to provide oral comments but would
6 like to do so now, please use the raise your hand
7 feature.

8 Laura, I do not see any hands raised.

9 MS. JENNINGS: Okay. Thank you, Stephanie.
10 There being nothing further, this public hearing for
11 proposed Rule 45CSR40 is concluded. There are no
12 further public hearings this evening.

13 I would like to thank everyone in attendance
14 for your interest and your participation in the public
15 hearings and public comment process this evening and I
16 wish you all a good evening. Thank you.

17 MR. FLETCHER: Okay. All right. Well, if
18 that is it, then we will go ahead and close the
19 proceedings. All right. Thanks, everyone, for
20 attending.

21 COURT REPORTER: Thank you. Have a great
22 night.

23 MS. JENNINGS: Thanks.

24 (Proceeding was concluded at 6:49 p.m.)

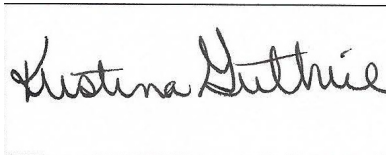
1 STATE OF WEST VIRGINIA

2 COUNTY OF KANAWHA, to wit:

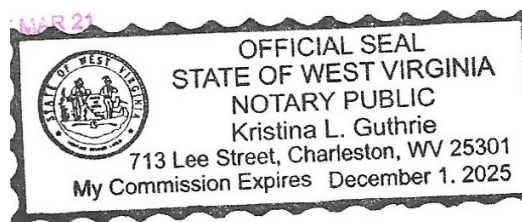
3 I, Kristina Guthrie, Professional Reporter and
4 Notary Public within and for the County and State
5 aforesaid, duly commissioned and qualified, do hereby
6 certify that the foregoing proceedings were duly
7 transcribed by me from stenographic notes taken in the
8 foregoing proceedings to the best of my skill and
9 ability.

10 I do further certify that the said proceedings
11 were correctly taken by me in shorthand notes, and that
12 the same were accurately written out in full and reduced
13 to typewriting by means of computer-aided transcription.

14 Given under my hand this [] day of [], 2021.

15
16
17 

18 Kristina Guthrie, Professional
19 Reporter and Notary Public



(300,000 17:23	60 6:21	addition 10:23	applicability 14:7
(b) 17:20	4	61 22:13	address 19:12	applicable 24:24
1	4 18:6	63 22:13	addressed 4:8 6:8 9:11 13:19 21:17 24:8	applicant 18:22 19:23,24 20:4
1 7:10 22:13	4(a) 19:22 20:7	6:49 26:24	adequate 11:17 18:15	application 14:8 19:10
1.1 10:18	4.3(e) 11:20	7	adjusts 12:9	applications 11:14 17:6
1.5 11:1	40CFR 6:21 14:4 22:13 24:19	7.3 18:20	administer 14:14	apply 11:2,4
100 17:8	45 9:22	7.3(b) 18:21	adopted 8:9	approach 11:22
111(b) 6:18 11:16	4530(a) 16:14	7.4(a) 19:2,7	adopts 6:14,22 21:23	approve 8:7
13 10:21	45CSR13 9:20	70 14:4	advice 11:5 23:5	area 16:21 17:17
14 9:20	45CSR16 5:19,23 6:1,12 7:11,18 8:17	9	affected 24:21	assist 5:6
16 8:6	45CSR22 8:18,24 9:4,15 10:7,12,18 13:3	95 17:8	agency 6:17 11:13, 17 12:5 16:9 18:24 19:1 22:2	assure 18:18 19:24
19 9:20	45csr22(a) 11:10	97 17:9	aggregated 16:19	attempted 20:4
2	45CSR30 13:4,8, 12,23 15:10,16 19:15,20 20:24	98 17:9	ahead 4:19 7:23 10:16 15:20 25:17 26:18	attendance 3:24 5:21 9:2 13:10 21:7 23:22 26:13
2.17 10:21	45CSR34 21:1,5, 10,21 22:16,23 23:15	A	air 3:8,15 4:1 5:14 6:18 7:4,13 9:1,4, 16,19,21,22 10:1,2, 20 14:1,3 15:11 16:3,7 17:4 21:6, 11,22,24 22:3,6,12, 18 25:8,24	attending 26:20
2.24 16:2	45CSR38 16:5	accept 6:12 9:15 13:23 21:21 24:11	amendments 10:19	authority 7:6 22:8
2.26 17:20	45CSR40 23:16,20 24:1,11 25:6,13 26:11	accepted 6:4 9:7 13:15 18:10 21:13 24:4	amount 14:23	authorization 7:10 10:5 15:9 22:15 25:5
2.26(a) 16:12		accordance 7:12 9:20 14:15 22:17 24:19 25:8	Analyst 3:18	avoid 12:1,13
2.26(a)(1) 16:12		accounted 14:15	annual 7:8 12:9 22:10	avoiding 17:2
2022 6:3 7:10 9:6 13:14 21:12 22:14 24:3	5	Act 4:1 6:18 7:4,13 14:3 15:11 22:3,6, 18 25:8	annually 12:10	aware 12:3
2023 3:9	5 18:6 19:22	action 10:6	apologize 19:19 20:15 25:19	B
22 17:21	51.121 24:19	actual 11:13 12:13	appended 6:24	back 20:6
22(b) 11:11	5th 6:3 9:6 13:14 21:12 24:3	add 10:19 19:18 25:23	appendices 6:22	barrels 17:23
250 24:18	6	added 18:9 19:14, 23		base 15:3
3	6.(a) 18:6	adding 10:23 18:4		based 14:22
3 20:7	6.8(a) 19:22 20:7			basis 12:9
3.(a) 18:6				beef 20:12
3.3 11:9				begin 8:19 13:4 21:1 23:16
30 10:5				

benefit 17:1 bit 11:3 15:24 18:9, 13 black 20:5 boilers 24:17 broad 10:22 broader 11:9 budget 10:1 24:16 business 11:23,24 20:8,9 <hr/> C <hr/> call 7:19 10:13 15:16 22:23 25:13 called 4:15,18 calling 5:9 capacity 17:22 18:2 case 20:9 cement 25:1 Certificates 9:17 cetera 16:21 Chair 8:1 chance 8:5 change 16:5,11 17:20 19:11 Chapter 8:1 characterization 25:3 chat 5:4 Chief 3:4 choice 11:6 circumstances 19:3 circumvent 17:13 clarifications 15:8	Clean 4:1 6:18 7:4, 13 14:3 15:11 22:3, 5,18 25:8 clear 11:4,15 17:11 close 6:5 9:8 13:16 21:14 24:5 26:18 Club 8:2 23:6 25:21 codifies 6:19 collect 9:17 collected 9:24 14:12 combustion 24:17,22 commence 3:13 comment 4:9,23 8:11 10:15 12:21 18:8 19:18 20:19 26:15 commenters 20:18 comments 3:22 4:1,4,8,17,19,22 5:11 6:4,8,9,12 7:14,15,18,22,23 8:4,6 9:7,11,12,15 10:8,9,12,16,18 13:15,19,20,23 15:12,13,15,20,22 19:11,13,14,20 21:13,17,18,21 22:19,20,22 24:4,7, 9,11 25:9,10,12,16 26:5 common 16:21 17:18 communicate 20:11 Communications 3:5 community 12:14, 17	company 20:6 complete 19:9 complexity 15:3 compliance 3:17 24:20,23 component 15:2, 3,4 comport 15:5 comprehensive 14:1 compressor 16:18,23 17:6 compressors 17:12 concluded 8:18 13:3 20:24 23:15 26:11,24 conclusion 3:13 confess 23:3 confusion 11:6 12:14 16:7 considerate 5:8 considered 17:18, 23 18:4 consistency 7:2 consistent 14:2 construct 9:18 consumer 11:21 12:7,12 contact 19:23 20:4 content 14:8 contiguous 16:20 17:17 continue 7:5 15:1 22:7 contradiction 25:21 contradictory 19:7	control 16:21 17:18 23:21 24:2, 12,23 controversy 20:14 Conversation 8:1 copy 18:22 cost 11:13,18 12:2 costs 14:14,21 counterpart 15:6 23:4 county 20:14 couple 19:20 court 3:19,24 5:16, 18 8:22 13:5,7 21:2,4 23:17,19 26:21 cover 14:13,21 CPA 18:21 criteria 6:20 CTO 9:18 current 7:2 12:11 <hr/> D <hr/> DAQ 3:11,23 4:5,6 day 6:3 9:6 13:14 21:12 24:3 deal 18:7 debate 4:5 deferred 14:8 define 11:1 18:10 19:3 definition 10:20, 22 16:2 18:1 definitions 18:17 delegation 7:12 22:17	delete 18:14 deleted 16:14 18:23 19:10 deletion 16:4 deletions 18:7 demonstration 24:16 demonstrations 5:3 DEP 12:1,10 26:1 Department 3:5 7:5 22:6 description 20:8, 10 design 24:18 designing 17:11 difficult 12:5 16:8 direct 14:13 direction 26:3 discretion 18:10, 14 discussion 4:5 diversification 14:24 Division 3:8,15 5:14 9:24 document 4:9 dramatically 12:4 duplication 16:7 <hr/> E <hr/> earlier 20:3 effective 10:2 efficiently 5:12 elapsed 8:5 emission 9:21 21:6,11,22,23 22:8,
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11 24:14,19 emissions 15:2 16:16,17,19 23:21 24:2,12,15 emitted 14:23 enable 7:4 22:6 encourage 11:18 18:17 end 19:14 20:18 Energy 20:3,9 enforcement 3:17 7:6 22:8 engage 4:4 engines 24:22 ensure 4:13 entry 4:12 Environmental 3:6,16 6:17 7:5 22:2,7 EPA 7:7,11 14:19 15:10 19:4 22:9,13, 16 25:7 equipment 16:17 equivalent 16:24 establishes 6:14 9:17 11:21 14:5 24:13 establishment 14:1 evening 3:2,4,15, 20 5:23 7:20 26:12, 15,16 exceeding 17:22 excess 24:15 exemption 18:1 exemptions 14:7 expended 14:13 explicit 18:17	exploration 16:16 extensive 15:22 <hr/> F <hr/> facilities 17:2,12 18:3 fact 8:2 failed 18:14 fairly 26:1 feature 5:2,4 8:12 12:23 23:11 26:7 federal 6:18 7:2,9, 13 14:19 15:6,11 16:4 18:24 22:2,18 23:4 25:4,7,20 fee 9:1,5,16 11:9, 11,16 12:6,15 14:11,18,22,24 15:1,3 fees 9:17,24 10:4 11:12 12:1,9,11 14:12,20 final 18:21 19:9 Finally 11:20 fine 11:7 finished 4:23 Fletcher 3:2,4 19:17 26:17 flexibility 15:24 floor 7:14 10:8 15:12 22:19 25:9 follow 23:7 forum 4:4 foul 5:8 fugitive 17:24 18:3 fulfill 7:3,12 15:11 22:5,17 25:7 fully 11:12,17,19 12:6	functionally 16:23 fund 9:24 <hr/> G <hr/> gas 16:16 17:2,5 18:3 general 6:19 18:2 generally 10:3 18:10 give 19:11 good 3:2 7:20 23:7 26:2,16 Google 5:2,5 great 26:21 greater 24:18 group 17:16 groups 4:21 Guthrie 3:19 <hr/> H <hr/> Hammonds 3:16 4:16 7:20 8:10,15 10:14 12:20 15:18 20:17 23:1,9 25:15 26:4 hand 5:2 8:12 12:22 20:20 23:11 26:6 hands 8:13 20:21 23:12 26:8 happy 19:12 hazardous 16:3,6 21:6,11,22,24 22:12 heading 26:3 hearing 3:10,14,23 4:3,7 5:6,23 6:1,5, 11 8:17,18 9:3,8,14 13:2,3,6,12,16,22	20:23,24 21:3,10, 14,20 23:14,15,18 24:1,5,10 26:10 hearings 3:3,8,12, 21 26:12,15 heat 24:18 held 3:12 helpful 12:9,17 hole 20:5 hope 8:8 15:24 <hr/> I <hr/> identifies 11:9 immediately 3:13 implement 6:20 important 10:23 improving 26:1 include 7:8 10:3 15:2,3 22:10 included 6:7 9:10 13:18 18:11 21:16 24:7 including 9:22 14:7 inclusive 10:22 incorporates 21:23 incorporation 7:9 22:11 increase 12:6 increases 11:10, 11 increasing 10:4 index 11:21 12:7, 12 indirect 14:14 industrial 24:16	industry 17:11 inflation 12:2,3 info 19:23 information 19:24 20:1,5 input 24:18 interest 26:14 internal 24:22 interrupting 4:13 5:9 involved 20:11 issuance 14:9 issue 19:5 issues 5:6 20:2 item 20:16 <hr/> J <hr/> James 5:21 9:2 13:10 21:7 23:22 Jennings 3:18 5:14,16,22 8:14,16, 23 9:3 13:1,11 20:22 21:9 23:13, 24 26:9,23 Jim 7:22,24 Joseph 5:21 9:2 13:10 21:7 23:22 July 6:3 9:6 13:14 21:12 24:3 June 7:10 22:13 justify 11:19 <hr/> K <hr/> Keatly 13:10 21:7 23:22 kilns 25:1 kind 17:3
---	---	---	--	---

Kotcon 5:21 7:22, 24 8:10 9:2 10:15, 17 12:20 13:10 15:19,21 19:17,19 20:17 21:7 23:2,3, 9,22 25:15,16,18 26:4 Kristina 3:19 8:20 <hr/> L <hr/> language 5:9 15:7 large 24:16 Lastly 15:7 Laura 3:18 5:14,15 7:20 8:13 10:14 12:24 15:18 20:21 23:1,12 25:15 26:8 leads 16:7 leaves 17:3 led 20:13 left 12:5 legislative 3:9 6:1 9:4 13:12 21:10 24:1 levels 25:24 Likewise 19:2 limit 4:21 7:15 10:9 15:13 16:1 17:7 22:20 25:10 limitation 24:14 list 16:10 17:21 18:12,16 20:18 listen 4:4 listing 12:11 lists 16:6 located 17:17 long 11:5 lot 20:14	<hr/> M <hr/> made 4:10 6:5 9:8 13:16 15:8 21:14 24:5 mailing 18:11,16 main 14:17 maintain 7:2 10:1 major 16:24 17:1, 7,8,10,13,18,23 making 4:10 management 9:1, 5,16 10:2 mandate 18:24 20:7 manufacturing 25:1 Marion 20:3,9 match 16:3 maximum 24:17 meet 3:24 11:17 12:2 meeting 4:6,13 Meets 5:2,5 mention 19:21 methods 6:22,23 18:10 minor 12:18 minutes 4:22 7:16 10:10 15:14 22:21 25:11 missed 19:20 mmbtu/hr 24:18 modification 12:16 14:10 modifications 12:18 modify 9:18 19:4	momentarily 8:19 13:4 21:1 23:16 monitored 5:5 monitoring 24:14, 20,23 muted 4:12 <hr/> N <hr/> national 6:14 7:6 21:23 22:8,11 23:6 25:21 necessarily 12:15 needed 17:14 night 26:22 nitrogen 23:21 24:2,12,13 non-title 10:1 Northern 20:14 notice 18:19 NOX 24:13,15,19, 22 25:4 number 12:13 17:5 18:7 <hr/> O <hr/> objection 18:22 obligation 14:5 obligations 7:12 15:11 22:17 25:7 obsolete 15:7 obtain 14:6 Officer 3:5 official 4:9 oil 16:16 17:2 ongoing 23:6 open 4:5 7:14 10:8 15:12 22:19 25:9	Operate 9:18 operated 20:8 operating 13:9,13, 24 14:3,6,15 opportunity 8:2 option 20:20 oral 6:4 9:7 13:15 21:13 24:4 25:16 26:5 order 6:3 9:5 13:14 21:12 24:3 organizations 4:21 overly 20:10 oxides 23:21 24:2, 12,13 ozone 23:21 24:2, 12,14,19,22 25:4, 23 <hr/> P <hr/> p.m. 26:24 part 4:9 6:5,9,21 9:8,12 12:14 13:16, 20 14:4 21:14,18 24:5,8 participants 4:12, 14 participating 3:3, 20 participation 26:14 Partners 20:3,9 Parts 22:13 past 20:2 people 18:14 percent 17:8,9 performance 5:20,24 6:2,13,15,	20,23 period 8:5 18:15 permit 9:22 11:14 12:1 14:4,6,8,15 18:22 19:4,5 20:2 permits 9:18 11:12 13:9,13,24 permitted 5:4 permittee 19:8 permitting 14:2 person 7:21 10:15 15:19 20:1 23:2 petroleum 17:21 pick 11:6 pipeline 16:18 17:2,5,10 pipelines 16:22 place 20:16 plan 24:20,23 Planning 3:19 point 8:6 pollutant 16:3,7 pollutants 14:23 17:4 21:6,11,22,24 22:12 pollution 9:19 10:20 pool 16:22 position 12:5 practice 11:23 pre-register 4:15, 24 8:11 12:21 20:19 26:5 pre-registered 7:17 10:11 15:15 22:22 25:12 preclude 19:4 previous 3:14
---	---	---	---	---

price 11:21 12:7,12	22,23 4:3,6 5:5 6:1, 11 8:17,18 9:3,14 13:2,3,12,22 16:9 17:3 18:8,11,18,19 20:11,23,24 21:10, 20 23:14,15 24:1, 10 26:10,12,14,15	14:13	regulatory 6:16 21:24	responding 4:7
primary 7:6 22:7		receive 3:22	reimburse 11:13, 17	response 4:8 6:9 9:12 13:20 21:18 24:9
procedures 6:19		received 4:8	reissuance 14:10	responsibilities 7:3 22:5
proceed 8:20 13:5 21:2 23:17		recognize 18:16	relocate 9:19	resulting 16:4
proceeding 26:24	publish 12:10	recommend 16:15 17:15 18:4,23	remaining 15:23	review 11:18 14:9 17:3,13 19:20
proceedings 3:1 26:19	pump 16:18	recommendation 12:8	reminder 5:3 7:15 10:9 15:13 22:20 25:10	reviewed 17:5 23:4 25:19
process 4:2 26:15	purpose 3:21 4:3 6:11 9:14 13:22 21:20 24:10	recommended 14:19	remissions 17:24 18:3	reviewing 11:13
production 16:17	purposes 14:17	record 3:22 4:10 6:6,10 9:9,13 13:17,21 21:15,19 24:6,9	removed 15:8	reviews 17:1
program 9:1,5,16, 17 10:1,2 14:4,15, 21 25:5	pursuant 6:17 14:12 22:2	recorded 3:24	renewal 14:9	revise 12:1
promulgated 6:16 7:7 9:22 22:1,9,12	<hr/> Q <hr/>	recordkeeping 24:15,20,24	reopening 14:9	revised 10:5 14:18 15:5 25:2
promulgation 7:10 10:6 15:9 22:4,15 25:6	quality 3:16 5:14 9:1,4,16 10:2 14:1 25:24	redefined 16:3	reporter 3:19,24 5:17,18 8:22 13:5,7 19:16 21:2,4 23:17, 19 26:21	revising 14:17
proposed 3:8,11, 14,23 4:5 5:11 6:1, 12 7:18 8:17,18 9:4,15 10:12,19 11:16 13:3,4,12,23 14:24 15:1,15 20:24 21:1,10,21 22:22 23:15,16 24:1,11 25:12 26:11	Quality's 3:8 10:1	reduction 24:20	reporting 24:15, 21,24	revision 14:9
	question 6:8 9:11 13:19 21:17 24:6,8	redundancy 11:6, 7	representing 4:20	revisions 6:7,12 7:1,8 9:10,15 10:3 13:18,23 21:16,21 22:10 24:6,11
	questions 4:7 6:6 9:9 13:17 19:13 21:15	redundant 11:3,7	request 8:2	revocation 14:10
	<hr/> R <hr/>	refer 16:10	require 14:20	riser 11:21,22 12:7, 8,12
Protection 3:6 6:17 7:5 22:2,7	raise 5:1 8:12 12:22 20:20 23:11 26:6	reference 6:22 7:9 16:14 22:11	required 10:6 14:14 18:19	rising 12:4
provide 4:16 7:18 10:12 15:15 18:22 20:19 22:22 25:12, 16 26:5	raised 8:13 20:21 23:12 26:8	refers 10:21	requirement 17:13 18:24 19:22	risk 17:3
provided 7:21	re-mute 4:24	refraining 5:8	requirements 4:1 6:16 9:23 11:16 13:9,13,24 14:2,4, 11 19:9 22:1 24:16, 21,24 25:20	Robert 13:10 21:7 23:22
provision 11:2,4 18:5,8	re-structured 14:24	Reg 8:6 10:21	Resource 3:17	routine 23:7 25:22
provisions 19:6	ready 5:17 8:20 13:5 21:2 23:17	regard 16:2 18:6	respect 10:18 11:20	rule 3:14 4:9 6:1, 12,14,19,21 7:1,8, 11,18 8:8,17,18 9:4,10,15,16,23,24 10:3,4,7,12 11:5 12:16,19 13:3,4,12, 23,24 14:5,12,16, 18 15:5,10,15,22 16:4 17:14 20:24 21:1,10,21,23 22:4, 10,16,22 23:15,16
proviso 11:12	real 17:1	register 10:15 15:19 23:10	respectful 5:7	
prudent 11:22	reasonable 11:22	registered 7:21 20:18 23:2 25:16	respond 18:15 20:1	
public 3:3,7,10,21,		registration 9:23		
		regulated 12:14, 17		
		regulations 7:2,9 14:19 15:6		

24:1,11,13 25:2,4, 6,12 26:11 rulemaking 4:2 6:6,9 9:9,12 13:17, 20 21:15,18 24:6,9 rules 3:9,11,23 4:6 5:11 6:7 8:3 9:21 13:18 15:23 21:16 24:7 run 11:24 <hr/> S <hr/> screen 5:3 season 23:21 24:2, 12,14,19,22 25:5 secretary 4:10 18:9,13 19:5 section 3:18,19 6:17 10:18,21,24 11:1,9,20 16:2,12 18:6,20 19:2,6,10, 15,22 20:7 sections 20:12 sentence 16:13,15 17:16 18:21,23 19:7,8 separate 3:10 16:6 sequentially 3:12 serve 7:24 session 3:10 set 6:21 sharing 5:4 Sierra 8:2 23:6 25:21 significant 17:4 significantly 26:1 similar 16:19 18:1 simpler 16:9 simply 16:9	single 17:6 solely 14:13,22 source 14:6,23 16:24 17:1,7,8,13, 16,19 sources 5:20,24 6:2,13,15,21 9:19, 21 14:7,8,20 17:17, 23 speak 4:15 5:1 8:3 23:10 speaker 5:1 speaking 5:10 Specialist 3:17 specifically 20:2 specifications 6:23 standards 5:20,23 6:2,13,14,20,24 7:7 21:6,11,22,23 22:9, 12 24:23 start 15:21 state 4:19 7:3 11:2 14:3 18:24 22:5 State's 4:10 state-only 10:7 States 6:16 22:1 station 17:6 stationary 5:20,24 6:2,13,15,21 17:16, 17 24:21 stations 16:18,23 statutory 9:19 10:20,21 Stephanie 3:16 4:16 7:17 8:14 10:11 13:1 15:14 20:22 22:21 23:13 25:11 26:9 storage 17:21,22	striking 16:13,15 17:15 strongly 18:17 structure 14:18,22 subject 9:21,23 23:5 25:3,4,20 submit 19:9 submitted 7:11 8:4,8 15:10 22:16 25:6 subsection 17:21 18:5 sufficient 14:20 suggestions 18:20 Sunset 11:1,4 support 8:7,8 10:23 11:11 12:6, 19 16:5,10 23:6 25:22 suspension 14:10 sustainability 15:1 sustainably 14:21 system 14:2 <hr/> T <hr/> table 11:10 12:11 16:5,14 talking 4:14 technical 3:18 5:6 Terry 3:4 5:16 test 6:23 testimony 6:4 9:7 13:15 21:13 24:4 time 5:12 16:1 18:15 Title 9:22 14:3,6, 11,14,20,21	told 4:18 topic 5:11 7:15 10:9 11:9 15:13 22:20 25:10 total 17:22 trading 25:5 transfer 17:22 transitional 15:7 turbines 24:17 turn 4:16 turning 5:13 <hr/> U <hr/> U.S. 7:7,11 14:19 15:10 22:9,13,16 25:7 unclear 19:12 Unger 5:21 9:2 13:10 21:7 23:22 United 6:16 22:1 units 16:20 17:22 25:3 Unlike 4:6 unmute 7:19 10:13 15:16 22:23 25:13 unmuted 4:18 unusual 19:3 upcoming 3:9 update 18:16 25:2, 22 updates 23:5,7 25:19 updating 10:4 upgrades 8:7 urge 26:1	<hr/> V <hr/> vague 20:10 video 5:3 violation 19:8 Virginia 3:5,9 7:4 8:1 22:6 25:24 virtual 5:24 9:3 13:11 21:9 23:24 <hr/> W <hr/> web 12:10 website 4:11 West 3:5,9 7:4 8:1 22:6 25:24 witnesses 5:4 word 10:20 work 26:2 written 8:4 <hr/> Y <hr/> year 12:4,16 20:3 years 10:5 25:24
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Jennings, Laura M <laura.m.jennings@wv.gov>

WV DAQ Proposed Rules for the 2023 Legislative Session

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

Fri, Jun 3, 2022 at 9:56 AM

To: Fernandez.Cristina@epa.gov

Cc: Laura M Crowder <laura.m.crowder@wv.gov>, David R Fewell <david.r.fewell@wv.gov>, Mary Cate Opila <Opila.MaryCate@epa.gov>, "Gordon, Michael" <gordon.mike@epa.gov>

Cristina,

The public comment period for the DAQ proposed rules begins today and concludes July 5, 2022. Enclosed are the signed transmittal letter for West Virginia DAQ's proposed rules for the 2023 Legislative Session, the public notice, and proposed rules 45CSR16, 45CSR30, 45CSR34, and 45CSR40. DAQ is proposing the following rules this year:

45CSR16 – Standards of Performance for New Stationary Sources

45CSR22 - Air Quality Management Fee Program (State Only Rule)

45CSR30 - Requirements for Operating Permits

45CSR34 – Emission Standards for Hazardous Air Pollutants

45CSR40 - Control of Ozone Season Nitrogen Oxides Emissions

If you have any questions or formal comments, please direct them to Laura Crowder or me.

Regards,

Laura J

Laura M. Jennings*Technical Analyst, Planning*

WV DEP, Division of Air Quality

601 57th Street, SE

Charleston, WV 25304

Laura.M.Jennings@wv.gov

(304) 926-0499 x41266

(304) 414-1266 (Direct Dial)

5 attachments

**DAQ Public Notice-2023 Rules.pdf**

519K

**Proposed Rule 45CSR16-SOS.pdf**

339K

**Proposed Rule 45CSR34-SOS.pdf**

392K

**Proposed Rule 45CSR40-SOS.pdf**

1091K

**Proposed Rule 45CSR30-SOS.pdf**

3841K



west virginia department of environmental protection

Division of Air Quality
601 57th Street, SE
Charleston, WV 25304

Harold D. Ward, Cabinet Secretary
dep.wv.gov

June 2, 2022

Ms. Cristina Fernandez
Air Protection Division, Director
U.S. EPA, Region 3
Four Penn Center
1600 John F. Kennedy Boulevard
Philadelphia, PA 19103-2852
Sent via e-mail only to: Fernandez.Cristina@epa.gov

Re: Proposed Air Quality Rules for 2023 WV Legislative Session

Dear Director Fernandez:

Enclosed is a notice of public comment period and public hearings, and a copy of each of the following four (4) proposed air quality rules: 45 C.S.R. 16 (Standards of Performance for New Stationary Sources), 45 C.S.R. 30 (Requirements for Operating Permits), 45 C.S.R. 34 (Emission Standards for Hazardous Air Pollutants), and 45 C.S.R. 40 (Control of Ozone Season Nitrogen Oxides Emissions) for the West Virginia Department of Environmental Protection (DEP), Division of Air Quality (DAQ). The DAQ did not include the state only rule 45 C.S.R. 22 as an enclosure. Once the legislative rule making processes has been completed, the DAQ is proposing to adopt these rules in the Spring of 2023.

The DAQ will accept written comments on the proposed rules until 5:00 p.m. on July 5, 2022. In addition, the agency will receive oral comments at a public hearing scheduled July 5, 2022, at 6:00 p.m. as detailed in the enclosed public notice. The attached public notice describes which rules the agency is proposing and what action the DAQ intends to request of the U.S. Environmental Protection Agency upon authorization and promulgation of the rules.

Please submit any written comments to my attention at the above address, or feel free to call me with any questions regarding this matter at (304) 414-1253.

Sincerely,

Laura M. Crowder

Digitally signed by: Laura M. Crowder
DN: CN = Laura M. Crowder email = Laura.M.
Crowder@wv.gov C = US O = West Virginia Department
of Environmental Protection OU = Division of Air Quality
Date: 2022.06.02 13:51:21 -04'00'

Laura M. Crowder
Director

LMJ/lmc
Enclosures

W. VA. CODE
CHAPTER 29A, ARTICLE 3

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

West Virginia Code, Chapter 29A, Article 3

1 message

West Virginia Code <wvcode@wvlegislature.gov>

Fri, Apr 28, 2023 at 4:28 PM

To: laura.m.jennings@wv.gov

ARTICLE 3. RULE MAKING.

§29A-3-1. Rules to be promulgated only in accordance with this article.

In addition to other rule-making requirements imposed by law and except to the extent specifically exempted by the provisions of this chapter or other applicable law, and except as provided for in article three-a of this chapter, every rule and regulation (including any amendment of or rule to repeal any other rule) shall be promulgated by an agency only in accordance with this article and shall be and remain effective only to the extent that it has been or is promulgated in accordance with this article.

§29A-3-1a. Filing proposed amendments to an existing rule; and repealing an existing rule.

(a) An agency shall file all sections of the proposed rule when proposing an amendment to an existing rule. The proposed rule shall be accompanied by note of explanation as to the effect of the amendment and its relation to the existing rules.

(b) An agency proposing to repeal a rule, shall file the rule in its entirety with the provisions of the rule struck through. An agency may not repeal a rule by reference in another rule.

§29A-3-1b. Rules of the tax department.

Notwithstanding the provisions of section eight, article two of this chapter, the Tax Commissioner may reproduce the same in his state tax bulletin and may, upon request, distribute copies of the proposed or emergency rule after such proposed or emergency rule has been filed in the state register and may charge a reasonable fee in an amount set to recover his cost of duplicating and mailing the same. The moneys so received shall be deposited in the treasury to the credit of the Tax Commissioner's account for printing, office supplies or postage.

§29A-3-2. Limitations on authority to exercise rule-making power.

(a) Except when, and to the extent, that this chapter or any other provision of law now or hereafter made expressly exempts an agency, or a particular grant of the rule-making power, from the provisions of this article, every grant of rule-making authority to an executive or administrative officer, office or agency, heretofore provided, shall be construed and applied to be effective only:

(1) If heretofore lawfully exercised in accordance with the prior provisions of this chapter and the resulting rule has not been revoked or invalidated by the provisions hereof or by the agency, or

(2) If exercised in accordance with the provisions hereof.

(b) No executive or administrative agency shall be deemed to have power and authority to promulgate a legislative rule without compliance with this article unless: (1) The provision of this code, heretofore or hereafter enacted, granting such power and authority, expressly exempts its exercise from legislative rule-making review prior to promulgation or (2) the grant of such power and authority is exempted from the application of this chapter by the express provisions of this chapter. To the extent any such grant of power and authority, not so exempt, shall be deemed to exceed the limits and provisions of this article, such power and authority to promulgate legislative rules is hereby revoked.

§29A-3-3. Rules of procedure required.

In addition to other rule-making requirements imposed by law:

(a) Each agency shall adopt procedural rules governing the formal and informal procedures prescribed or authorized by this chapter. Procedural rules shall include rules of practice before the agency, together with forms and instructions.

(b) To assist interested persons dealing with it, each agency, shall so far as deemed practicable, supplement its rules or regulations with descriptive statements of its procedures.

§29A-3-4. Filing of proposed legislative exempt rules, procedural rules and interpretive rules.

(a) When an agency proposes a legislative exempt rule, procedural rule or an interpretive rule, the agency shall file in the State Register a notice of its action, including the text of the rule as proposed.

(b) All proposed rules filed under subsection (a) of this section shall have a fiscal note attached itemizing the cost of implementing the rules as they relate to this state and to persons affected by the rules. The fiscal note shall include all information included in a fiscal note for either house of the Legislature and a statement of the economic impact of the rule on the state or its residents. The objectives of the rule shall be clearly and separately stated in the fiscal note by the agency issuing the proposed rules. A legislative exempt, procedural or interpretive rule is not void or voidable by virtue of noncompliance with this subsection.

§29A-3-5. Notice of proposed rulemaking.

When an agency proposes to promulgate a rule other than an emergency rule, it shall file with the Secretary of State, for publication in the State Register, a notice of its action, including therein any request for the submission of evidence to be presented on any factual determinations or inquiries required by law to promulgate such rule. At the time of filing the notice of its action, the agency shall also file with the Secretary of State a copy of the full text of the rule proposed and a fiscal note as defined in subsection (b), section four of this article. If the agency is considering alternative draft proposals, it may also file with the Secretary of State the full text of such draft proposals.

The notice shall fix a date, time and place for the receipt of public comment in the form of oral statements, written statements and documents bearing upon any findings and determinations which are a condition precedent to the final approval by the agency of the proposed rule and shall contain a general description of the issues to be decided. If no specific findings and determinations are required as a condition precedent to the final approval by the agency of the approved rule, the notice shall fix a date, time and place for the receipt of general public comment on the proposed rule. To comply with the public comment provisions of this section, the agency may hold a public hearing or schedule a public comment period for the receipt of written statements and documents, or both.

If findings and determinations are a condition precedent to the promulgation of such rule, then an opportunity for general public comment on the merits of the rule shall be afforded after such findings and determinations are made. In such event, notice of the hearing or of the period for receiving public comment on the proposed rule shall be attached to and filed as a part of the findings and determinations of the agency when filed in the State Register.

In any hearing for public comment on the merits of the rule, the agency may limit presentations to written material. The time, date and place fixed in the notice shall constitute the last opportunity to submit any written material relevant to any hearing, all of which may be earlier submitted by filing with the agency. After the public hearing or the close of the public comment period, whichever is later, the agency shall not permit the filing or receipt of, nor shall it consider, any attempted ex parte communications directed to it in the form of additional comment prior to the submission of its final agency-approved rule to the Legislative Rule-Making Review Committee pursuant to the provisions of section eleven of this article.

The agency may also, at its expense, cause to be published as a Class I legal publication in every county of the state any notice required by this section.

Any citizen or other interested party may appear and be heard at such hearings as are required by this section.

Prior to the submission of any agency-approved proposed rule to the Secretary of State, the agency shall respond to public comments received during the rule-making process and explain the reasoning for comments being incorporated or not incorporated into the rule. Failure to adequately respond to public comments may be grounds for rejection of the proposed rule.

§29A-3-6. Filing findings and determinations for rules in state register; evidence deemed public record.

(a) Incident to fixing a date for public comment on a proposed rule, the agency shall promulgate the findings and determinations required as a condition precedent thereto, and state fully and succinctly the reasons therefor and file such findings and determinations in the state register. If the agency amends the proposed rule as a result of the evidence or comment presented pursuant to section five, such amendment shall be filed with a description of any changes and statement listed for the amendment.

(b) The statement of reasons and a transcript of all evidence and public comment received pursuant to notice are public records and shall be carefully preserved by the agency and be open for public inspection and copying for a period of not less than five years from the date of the hearing.

§29A-3-7. Notice of hearings.

Notices of hearings required by sections five and six of this article shall be filed in the state register not less than thirty nor more than sixty days before the date of such hearing or the last day specified therein for receiving written material. Any hearing may be continued from time to time and place to place by the agency which shall have the effect of extending the last day for receipt of evidence or public comment. Notice of such continuance shall be promptly filed thereafter in the state register.

§29A-3-8. Adoption of legislative exempt, procedural, and interpretive rules.

(a) An agency shall consider a legislative exempt, procedural, and interpretive rule for adoption not later than six months after the close of public comment and file a notice of withdrawal or adoption in the State Register within that period. An agency's failure to file the notice constitutes withdrawal and the Secretary of State shall note the failure in the State Register immediately upon the expiration of the six-month period.

(b) A legislative exempt, procedural, or interpretive rule may be amended by the agency prior to final adoption without further hearing or public comment. The amendment may not change the main purpose of the rule. If the fiscal implications have changed since the rule was proposed, the agency shall attach a new fiscal note to the notice of filing. Upon adoption of the rule, including any

amendment, the agency shall file the text of the adopted legislative exempt, procedural, or interpretive rule with its notice of adoption in the State Register and the rule is effective on the date specified in the rule or 30 days after the filing, whichever is later or as specified in this code.

(c) An agency may repeal a legislative exempt, procedural, or interpretive rule by filing a notice of repeal with the Secretary of State.

§29A-3-9. Proposal of legislative rules.

When an agency proposes a legislative rule, other than an emergency rule, it shall be deemed to be applying to the Legislature for permission, to be granted by law, to promulgate such rule as approved by the agency for submission to the Legislature or as amended and authorized by the Legislature by law.

An agency proposing a legislative rule, other than an emergency rule, after filing the notice of proposed rulemaking required by the provisions of section five of this article, shall then proceed as in the case of a procedural and interpretive rule to the point of, but not including, final adoption. In lieu of final adoption, the agency shall finally approve the proposed rule, including any amendments, for submission to the Legislature and file such notice of approval in the state register and with the legislative rule-making review committee, within ninety days after the public hearing was held or within ninety days after the end of the public comment period required under section five of this article: Provided, That upon receipt of a written request from an agency, setting forth valid reasons why the agency is unable to file the agency approved rule within the ninety-day time period, the legislative rule-making review committee may grant the agency an extension of time to file the agency approved rule.

Such final agency approval of the rule under this section is deemed to be approval for submission to the Legislature only and does not give any force and effect to the proposed rule. The rule shall have full force and effect only when authority for promulgation of the rule is granted by an act of the Legislature and the rule is promulgated pursuant to the provisions of section thirteen of this article.

§29A-3-10. Creation of a legislative rule-making review committee.

(a) There is hereby created a joint committee of the Legislature, known as the legislative rule-making review committee, to review all legislative rules of the several agencies and such other rules as the committee deems appropriate. The committee shall be composed of six members of the Senate, appointed by the President of the Senate, and six members of the House of Delegates, appointed by the Speaker of the House of Delegates. In addition, the President of the Senate and the Speaker of the House of Delegates shall be ex officio nonvoting members of the committee and shall designate the cochairmen. Not more than four of the voting members of the committee from each house shall be members of the same political party: Provided, That in the event the membership of a political party is less than fifteen percent in the House of Delegates or Senate, then the membership of that political party from the legislative house with less than fifteen percent membership may be one from that house. The members shall serve until their successors shall have been appointed as heretofore provided. Members of the committee shall receive such compensation and expenses as provided in article two-a, chapter four of this code. Such expenses and all other expenses, including those incurred in the employment of legal, technical, investigative, clerical, stenographic, advisory and other personnel shall be paid from an appropriation to be made expressly for the legislative rule-making review committee, but if no such appropriation be made, such expenses shall be paid from the appropriation under "Account No. 103 for Joint Expenses," but no expense of any kind whatever payable under said Account No. 103 for joint expenses shall be incurred unless first approved by the Joint Committee on Government and Finance. The committee shall meet at any time, both during sessions of the Legislature and in the interim.

(b) The committee may adopt such rules of procedure as it considers necessary for the submission, presentation and consideration of rules.

§29A-3-11. Submission of legislative rules to the Legislative Rule-Making Review Committee.

(a) When an agency finally approves a proposed legislative rule for submission to the Legislature, pursuant to the provisions of section nine of this article, the secretary of the executive department which administers the agency pursuant to the provisions of §5F-2-1 *et seq.*, of this code shall submit to the Legislative Rule-Making Review Committee at its offices or at a regular meeting of such committee a number of copies in electronic or paper form as requested by the committee, which shall include the following information:

- (1) The full text of the legislative rule as finally approved by the agency, with new language underlined and with language to be deleted from any existing rule stricken through but clearly legible;
- (2) A brief summary of the content of the legislative rule and a description and a copy of any existing rule which the agency proposes to amend or repeal;
- (3) A statement of the circumstances which require the rule;
- (4) A detailed description of the rule's purpose and all proposed changes to the rule;
- (5) A fiscal note containing all information included in a fiscal note for either house of the Legislature, a statement of the economic impact of the rule on the state or its residents, and, if there are any adjustments to any fees or other special revenue included in the rule, a fiscal note shall include, for any fund affected by adjustments to fees or other special revenue, the fund name, the fund number, and the past five years of actual revenues and expenses of the fund;
- (6) One copy of any relevant federal statutes or regulations;

- (7) An explanation of the statutory authority for the rule, including a detailed summary of the effect of each provision of the rule with citation to the specific statute which empowers the agency to enact such provision;
- (8) All public comments for each proposed rule. An agency may consolidate substantially similar comments in the interest of efficiency;
- (9) All written responses by the agency to the substance of any public comments received, including whether the agency chose to modify the proposed rule in response to the comments or, if no changes were made, the rationale for declining to incorporate or make any suggested changes responding to the public comments. An agency may consolidate substantially similar responses in the interest of efficiency: *Provided*, That the agency's response shall address each issue and concern expressed by all comments received; and
- (10) Any other information which the committee may request or which may be required by law. If the agency is an agency, board or commission which is not administered by an executive department as provided for in §5F-2-1 *et seq.*, of this code, the agency shall submit the final agency-approved rule as required by this subsection.
- (b) The committee shall review each proposed legislative rule and, in its discretion, may hold public hearings thereon. Such review shall include, but not be limited to, a determination of:
- (1) Whether the agency has specific statutory authority to propose the rule and has not exceeded the scope of its statutory authority in approving the proposed legislative rule;
 - (2) Whether the proposed legislative rule is in conformity with the legislative intent of the statute which the rule is intended to implement, extend, apply, interpret or make specific;
 - (3) Whether the proposed legislative rule overlaps, duplicates or conflicts with any other provision of this code, any other rule adopted by the same or a different agency, with federal statutes and rules, or with local laws and rules;
 - (4) Whether federal funding will be impacted by its expiration and explanation as to such;
 - (5) Whether the proposed legislative rule is necessary to fully accomplish the objectives of the statute under which the rule was proposed for promulgation;
 - (6) Whether the proposed legislative rule is reasonable, especially as it affects the convenience of the general public or of persons particularly affected by it;
 - (7) Whether the proposed legislative rule could be made less complex or more readily understandable by the general public; and
 - (8) Whether the proposed legislative rule was proposed for promulgation in compliance with the requirements of this article and with any requirements imposed by any other provision of this code.
- (c) After reviewing the legislative rule, the committee shall recommend that the Legislature:
- (1) Authorize the promulgation of the legislative rule;
 - (2) Authorize the promulgation of part of the legislative rule;
 - (3) Authorize the promulgation of the legislative rule with certain amendments;
 - (4) Recommend that the proposed rule be withdrawn; or
 - (5) Reject the proposed rule.

The committee shall file notice of its action in the State Register and with the agency proposing the rule: *Provided*, That when the committee makes the recommendations of subdivision (2), (3), (4), or (5) of this subsection, the notice shall contain a statement of the reasons for such recommendation.

(d) When the committee recommends that a rule be authorized, in whole or in part, by the Legislature, the committee shall instruct its staff or the office of Legislative Services to draft a bill authorizing the promulgation of all or part of the legislative rule and incorporating such amendments as the committee desires. If the committee recommends that the rule not be authorized, it shall include in its report a draft of a bill authorizing promulgation of the rule together with a recommendation. Any draft bill prepared under this section shall contain a legislative finding that the rule is within the legislative intent of the statute which the rule is intended to implement, extend, apply or interpret and shall be available for any member of the Legislature to introduce to the Legislature.

§29A-3-12. Submission of legislative rules to Legislature.

(a) No later than 40 days before the sixtieth day of each regular session of the Legislature, the cochairmen of the Legislative Rule-Making Review Committee shall submit to the clerk of the respective houses of the Legislature copies of all proposed legislative rules which have been submitted to, and considered by, the committee pursuant to the provisions of §29A-3-11 of this code and which have not been previously submitted to the Legislature for study, together with the recommendations of the committee with respect to the rules, a statement of the reasons for any recommendation that a rule be amended or withdrawn, and a statement that a bill authorizing the legislative rule has been drafted by the staff of the committee or by Legislative Services pursuant to §29A-3-11 of this code. The cochairmen of the committee may also submit the rules at the direction of the committee at any time before or during a special session in which consideration of the rules may be appropriate. Beginning in 2019, the committee may withhold from its report any proposed legislative rule which was submitted to the committee after the last Friday in July and beginning in 2020, and every four years

thereafter, by the last Friday in August. The clerk of each house shall submit the report to his or her house at the commencement of the next session.

All bills introduced authorizing the promulgation of a rule may be referred by the President of the Senate and by the Speaker of the House of Delegates to appropriate standing committees of the respective houses for further consideration or the matters may be otherwise dealt with as each house or its rules provide. The Legislature may, by act, authorize the agency to adopt a legislative rule incorporating the entire rule or may authorize the agency to adopt a rule with any amendments adopted by the Legislature. The clerk of the house originating the act shall immediately file a copy of any bill of authorization enacted with the Secretary of State and with the agency proposing the rule and the clerk of each house may prepare and file a synopsis of legislative action during any session on any proposed rule submitted to the house during the session for which authority to promulgate was not by law provided during the session. In acting upon the separate bills authorizing the promulgation of rules, the Legislature may, by amendment or substitution, combine the separate bills of authorization insofar as the various rules authorized in the amendment or substitution are proposed by agencies which are placed under the administration of one of the single, separate executive departments identified under the provisions of §5F-1-2 of this code or the Legislature may combine the separate bills of authorization by agency or agencies within an executive department. In the case of rules proposed for promulgation by an agency which is not administered by an executive department pursuant to the provisions of §5F-1-2 of this code, the separate bills of authorization for the proposed rules of that agency may, by amendment or substitution, be combined. These provisions relating to combining separate bills of authorization according to department or agency are not intended to restrict the permissible breadth of bills of authorization and do not preclude the Legislature from otherwise combining various bills of authorization which have a unity of subject matter. Any number of provisions may be included in a bill of authorization, but the single object of the bill shall be to authorize the promulgation of proposed legislative rules.

(b) If the Legislature during its regular session disapproves all or part of any legislative rule which was submitted to it by the Legislative Rule-Making Review Committee during the session, an agency may not thereafter issue any rule or directive or take other action to implement the rule or part of the rule unless and until otherwise authorized to do so, except that the agency may resubmit the same or similar proposed rule to the Legislative Rule-Making Review Committee in accordance with the provisions of §29A-3-11 of this code.

(c) Nothing shall be construed to prevent the Legislature by law from authorizing, or authorizing and directing, an agency to promulgate legislative rules not proposed by the agency or upon which some procedure specified in this chapter is not yet complete.

(d) Whenever the Legislature is convened by proclamation of the Governor, upon his or her own initiative or upon application of the members of the Legislature, or whenever a regular session of the Legislature is extended or convened by the vote or petition of its members, the Legislature may by act enacted during the extraordinary or extended session authorize, in whole or in part, any legislative rule, whether submitted to the Legislative Rule-Making Review Committee or not, if legislative action on the rule during the session is a lawful order of business.

(e) As a part of any act that amends chapter 64 of this code, authorizing the promulgation of a proposed legislative rule or rules, the Legislature may also provide, by general language or with specificity, for the disapproval of rules not approved or acted upon by the Legislature.

§29A-3-13. Adoption of legislative rules; effective date.

(a) Except as the Legislature may by law otherwise provide, within sixty days after the effective date of an act authorizing promulgation of a legislative rule, the agency shall promulgate the rule in conformity with the provisions of law authorizing and directing the promulgation of the rule. In the case of a rule proposed by an agency which is administered by an executive department pursuant to the provisions of article two, chapter five-f of this code, the secretary of the department shall promulgate the rule as authorized by the Legislature. In the case of an agency which is not subject to administration by the secretary of an executive department, the agency which proposed the rule for promulgation shall promulgate the rule as authorized by the Legislature.

(b) A legislative rule authorized by the Legislature is effective upon filing in the State Register, or on the effective date fixed by the authorizing act or, if none is fixed by law, a later date not to exceed ninety days, as fixed by the agency.

(c) The Secretary of State shall note in the State Register the effective date of an authorized and promulgated legislative rule and shall promptly publish the duly promulgated rule in the Code of State Rules maintained by his or her office.

§29A-3-14. Withdrawal or modification of proposed rules.

(a) Any legislative rule proposed by an agency may be withdrawn by the agency any time before passage of a law authorizing or authorizing and directing its promulgation, but no such action shall be construed to affect the validity, force or effect of a law enacted authorizing or authorizing and directing the promulgation of an authorized legislative rule or exercising compliance with such law. The agency shall file a notice of any such action in the state register.

(b) At any time before a proposed legislative rule has been submitted by the legislative rule-making review committee to the Legislature pursuant to the provisions of section twelve of this article, the agency may modify the proposed rule to meet the objections of the committee. The agency shall file in the state register a notice of its modifying action including a copy of the modified rule, but shall not be required to comply with any provisions of this article requiring opportunity for public comment or taking of evidence with respect to such modification. If a legislative rule has been withdrawn, modified and then resubmitted to such committee, the rule shall be considered to have been submitted to such committee on the date of such resubmission.

§29A-3-15. Emergency legislative rules; procedure for promulgation; definition.

(a) Any agency with authority to propose legislative rules may, without hearing, find that an emergency exists requiring that an emergency rule be promulgated and promulgate the emergency rule in accordance with this section. The agency shall file the emergency rule, together with a statement of the facts and circumstances constituting the emergency and a listing of state agencies, professions, businesses and other identifiable interest groups affected by the proposed emergency rule, with the Secretary of State, who shall publish a notice of the filing in the State Register. However, an agency's good faith failure to list all known state agencies, professions, businesses and other identifiable interest groups is not a basis for disapproval of the emergency rule or does not subject the emergency rule to judicial review. The emergency rule becomes effective upon the approval of the Secretary of State in accordance with section fifteen-a of this article or upon the approval of the Attorney General in accordance with section fifteen-b of this article or upon the forty-second day following the filing, whichever occurs first. The emergency rule may adopt, amend or repeal any legislative rule, but the agency shall state, with particularity, the circumstances constituting the emergency requiring the adoption, amendment or repeal, and the emergency rule is subject to de novo review by any court having original jurisdiction of an action challenging its validity. An agency shall immediately file a copy of the emergency rule and the required statement with the Secretary of State and one copy with the Legislative Rule-Making Review Committee.

An emergency rule is effective for not more than fifteen months and expires earlier if any of the following occurs:

(1) The Secretary of State, acting under the authority provided in section fifteen-a of this article, or the Attorney General, acting under the authority provided in section fifteen-b of this article, disapproves the emergency rule because: (A) The emergency rule or an amendment to the emergency rule exceeds the scope of the law authorizing or directing the promulgation of the rule; (B) an emergency does not exist justifying the promulgation of the emergency rule; or (C) the emergency rule was not promulgated in compliance with the provisions of this section. An emergency rule may not be disapproved pursuant to the authority granted by clauses (A) or (B) of this subdivision on the basis that the Secretary of State or the Attorney General disagrees with the underlying public policy established by the Legislature in enacting the authorizing legislation. An emergency rule which would otherwise be approved as being necessary to comply with a time limitation established by this code or by a federal statute or regulation may not be disapproved pursuant to the authority granted by paragraphs (A) or (B) of this subdivision on the basis that the agency has failed to file the emergency rule prior to the date fixed by the time limitation. When the authorizing statute specifically directs an agency to promulgate an emergency rule, or specifically finds that an emergency exists and directs the promulgation of an emergency rule, the emergency rule may not be disapproved pursuant to the authority granted by paragraph (B) of this subdivision. An emergency rule may not be disapproved on the basis that the Legislature has not specifically directed an agency to promulgate the emergency rule, or has not specifically found that an emergency exists and directed the promulgation of an emergency rule;

(2) The agency has not previously filed and fails to file a notice of public hearing on the proposed rule within thirty days of the date the proposed rule was filed as an emergency rule, in which case the emergency rule expires on the thirty-first day;

(3) The agency has not previously filed and fails to file the proposed rule as approved by the agency following the close of the public comment period with the Legislative Rule-Making Review Committee within ninety days of the date the proposed rule was filed as an emergency rule, in which case the emergency rule expires on the ninety-first day;

(4) The Legislature has authorized or directed promulgation of an authorized legislative rule dealing with substantially the same subject matter since the emergency rule was first promulgated, in which case the emergency rule expires on the date the authorized rule is made effective; or

(5) The Legislature has, by law, disapproved the emergency rule, in which case the emergency rule expires on the date the law becomes effective.

(b) Any amendment to an emergency rule made by the agency shall be filed in the State Register and does not constitute a new emergency rule for the purpose of acquiring additional time or avoiding the expiration dates in subdivision (2), (3), (4) or (5), subsection (a) of this section: Provided, That the emergency amendment becomes effective upon the approval of the Secretary of State in accordance with section fifteen-a of this article or upon approval of the Attorney General in accordance with section fifteen-b of this article or upon the forty-second day following the filing, whichever occurs first.

(c) Once an emergency rule expires due to the conclusion of fifteen months or due to the effect of subdivision (2), (3), (4) or (5), subsection (a) of this section, the agency may not refile the same or similar rule as an emergency rule.

(d) An agency may not use the provisions of this section to avoid or evade any provision of this article or any other provisions of this code, including any provisions for legislative review and approval of proposed rules. Any emergency rule promulgated for that purpose may be contested in a judicial proceeding before a court of competent jurisdiction.

(e) The Legislative Rule-Making Review Committee may review any emergency rule to determine: (1) Whether the emergency rule or an amendment to the emergency rule exceeds the scope of the law authorizing or directing its promulgation; (2) whether there exists an emergency justifying the promulgation of the emergency rule; and (3) whether the emergency rule was promulgated in compliance with the requirements and prohibitions contained in this section. The committee may recommend to the agency, the Legislature or the Secretary of State any action it determines appropriate.

(f) For the purposes of this section, an emergency exists when the promulgation of an emergency rule is necessary: (1) For the immediate preservation of the public peace, health, safety or welfare; (2) to comply with a time limitation established by this code or by a federal statute or regulation; or (3) to prevent substantial harm to the public interest.

§29A-3-15a. Disapproval of emergency rules and amendments to emergency rules by the Secretary of State; judicial review.

(a) Upon the filing of an emergency rule or filing of an amendment to an emergency rule by an agency, under the provisions of section fifteen of this article, by any agency, except for the Secretary of State, the Secretary of State shall review such rule or such

amendment and, within forty-two days of such filing, shall issue a decision as to whether or not such emergency rule or such amendment to an emergency rule should be disapproved. An emergency rule filed by the Secretary of State shall be reviewed by the Attorney General as provided for in section fifteen-b of this article.

(b) The Secretary of State shall disapprove an emergency rule or an amendment to an emergency rule if he determines:

(1) That the emergency rule or an amendment to the emergency rule exceeds the scope of the law authorizing or directing the promulgation thereof; or

(2) That an emergency does not exist justifying the promulgation of the emergency rule or the filing of an amendment to the emergency rule; or

(3) That the emergency rule or an amendment to the emergency rule was not promulgated in compliance with the provisions of section fifteen of this article.

(c) If the Secretary of State determines, based upon the contents of the rule or the supporting information filed by the agency, that the emergency rule should be disapproved, he may disapprove such rule without further investigation, notice or hearing. If, however, the Secretary of State concludes that the information submitted by the agency is insufficient to allow a proper determination to be made as to whether the emergency rule should be disapproved, he may make further investigation, including, but not limited to, requiring the agency or other interested parties to submit additional information or comment or fixing a date, time and place for the taking of evidence on the issues involved in making a determination under the provisions of this section.

(d) If the Secretary of State determines, based upon the contents of the amendment to an emergency rule or the supporting information filed by the agency, that the amendment to the emergency rule should be disapproved, he may disapprove such amendment without further investigation, notice or hearing. If, however, the Secretary of State concludes that the information submitted by the agency is insufficient to allow a proper determination to be made as to whether the amendment should be disapproved, he may make further investigation, including, but not limited to, requiring the agency or other interested parties to submit additional information or comment or fixing a date, time and place for the taking of evidence on the issues involved in making a determination under the provisions of this section.

(e) The determination of the Secretary of State shall be reviewable by the Supreme Court of Appeals under its original jurisdiction, based upon a petition for a writ of mandamus, prohibition or certiorari, as appropriate. Such proceeding may be instituted by:

(1) The agency which promulgated the emergency rule;

(2) A member of the Legislature; or

(3) Any person whose personal property interests will be significantly affected by the approval or disapproval of the emergency rule by the Secretary of State.

§29A-3-15b. Disapproval of emergency rules and amendments to emergency rules by the Attorney General; judicial review.

(a) Upon the filing of an emergency rule or filing of an amendment to an emergency rule by the Secretary of State under the provisions of section fifteen of this article, the Attorney General shall review such rule or such amendment and, within forty-two days of such filing, shall issue a decision as to whether or not such emergency rule or such amendment to an emergency rule should be disapproved.

(b) The Attorney General shall disapprove an emergency rule or an amendment to an emergency rule if he determines:

(1) That the emergency rule or an amendment to the emergency rule exceeds the scope of the law authorizing or directing the promulgation thereof; or

(2) That an emergency does not exist justifying the promulgation of the emergency rule or the filing of an amendment to the emergency rule; or

(3) That the emergency rule or an amendment to the emergency rule was not promulgated in compliance with the provisions of section fifteen of this article.

(c) If the Attorney General determines, based upon the contents of the rule or the supporting information filed by the Secretary of State, that the emergency rule should be disapproved, he may disapprove such rule without further investigation, notice or hearing. If, however, the Attorney General concludes that the information submitted by the Secretary of State is insufficient to allow a proper determination to be made as to whether the emergency rule should be disapproved, he may make further investigation, including, but not limited to, requiring the Secretary of State or other interested parties to submit additional information or comment or fixing a date, time and place for the taking of evidence on the issues involved in making a determination under the provisions of this section.

(d) If the Attorney General determines, based upon the contents of the amendment to an emergency rule or the supporting information filed by the agency, that the amendment to the emergency rule should be disapproved, he may disapprove such amendment without further investigation, notice or hearing. If, however, the Attorney General concludes that the information submitted by the agency is insufficient to allow a proper determination to be made as to whether the amendment should be disapproved, he may make further investigation, including, but not limited to, requiring the agency or other interested parties to submit additional information or comment or fixing a date, time and place for the taking of evidence on the issues involved in making a determination under the provisions of this section.

(e) The determination of the Attorney General shall be reviewable by the Supreme Court of Appeals under its original jurisdiction, based upon a petition for a writ of mandamus, prohibition or certiorari, as appropriate. Such proceeding may be instituted by:

(1) The Secretary of State;

(2) A member of the Legislature; or

(3) Any person whose personal property interests will be significantly affected by the approval or disapproval of the emergency rule by the Attorney General.

§29A-3-16. Legislative review of procedural rules, interpretive legislative rules.

(a) The Legislative Rule-Making Review Committee may, with the assistance of the Legislative Auditor's Office, review any procedural rule, interpretive rule or existing legislative rule to determine if the rule is achieving its purpose, and based on its determination, if the rule should be continued, amended or repealed.

(b) Following the review, the Legislative Rule-Making Committee shall make recommendations to the agency or board, which promulgated the rule, and to the Joint Committee on Government and Finance.

§29A-3-17. Prior rules.

Any rule lawfully promulgated prior to the effective date of this chapter shall remain in full force and effect until:

(1) Such rule is expressly made ineffective by the provisions of this chapter, or

(2) Such rule should expire by reason of failure to refile the same as provided in section five of article two, or expires pursuant to its own terms and provisions lawfully made before the effective date of this section, or

(3) Such rule is repealed by the lawful act of the agency, in conformity with this chapter, or

(4) Such rule is invalidated by an act of the Legislature or the force and effect of another law.

§29A-3-18. Severability of legislative rules.

Unless there is a provision in a legislative rule specifying that the provisions thereof shall not be severable, the provisions of every legislative rule, whether enacted before or subsequent to the effective date of this section, shall be severable so that if any provision of any rule section or amendment thereto is held to be unconstitutional or void, the remaining provisions of the rule shall remain valid, unless the court finds the valid provisions are so essentially and inseparably connected with, and so dependent upon, the unconstitutional or void provision that the court cannot presume the Legislature would have enacted the remaining valid provisions without the unconstitutional or void one, or unless the court finds the remaining valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent: *Provided*, That if any legislative rule has its own severability clause, then that severability clause shall govern and control with respect to that section, in lieu of the provisions of this section. The provisions of this section shall be fully applicable to all future amendments to legislative rules, with like effect as if the provisions of this section were set forth in extenso and every such amendment were reenacted as a part thereof, unless such amendment to the legislative rule contains its own severability clause.

§29A-3-19. Sunset provision in rules.

(a) Any new legislative rule promulgated pursuant to this article after April 1, 2016, shall include a sunset provision terminating the rule on August 1 of the fifth year following its promulgation: *Provided*, That the rule may be renewed by the Legislature pursuant to the rule-making procedures and authority in this article: *Provided*, however, That if a different sunset or termination provision exists in the statute under which the proposed rule is promulgated, the enabling statute's provision shall control: *Provided further*, That this subsection shall not apply to rules promulgated by the Department of Environmental Protection or emergency rules promulgated pursuant to §29A-3-15 of this code.

(b) Any legislative rule existing as of April 1, 2016, that is thereafter amended pursuant to this article, shall include a sunset provision terminating the rule on August 1 of the applicable year as part of the amendment: *Provided*, That the rule may be renewed by the Legislature pursuant to the rule-making procedures and authority in this article: *Provided*, however, That if a different sunset or termination provision exists in the statute under which the legislative rule is promulgated, the enabling statute's provision controls: *Provided further*, That this subsection shall not apply to legislative rules promulgated by the Department of Environmental Protection or emergency rules promulgated pursuant to §29A-3-15 of this code.

(c) The existence of a sunset provision terminating a legislative rule shall not preclude the repeal of the legislative rule by the Legislature prior to its termination.

(d) As part of its rule review under this article, the Legislative Rule-Making Review Committee may establish a procedure for timely review of a legislative rule prior to its termination for those agencies that have affirmatively sought renewal prior to expiration. The procedure may include a requirement that the agency show cause as to why the terminating legislative rule is required and necessary to be continued for another term of years.

(e) The Secretary of State shall provide notice to the promulgating agency and the Legislative Rule-Making Review Committee at least 18 months prior to every legislative rule's termination date. The promulgating agency has 60 days from receipt of the notice to file the

legislative rule with the Secretary of State and the Legislative Rule-Making Review Committee affirmatively seeking renewal of the legislative rule: *Provided*, That, if the legislative rule that is scheduled to sunset is not being amended or changed, except for a new sunset date, the rule is not subject to the public comment period requirements contained in §29A-3-5 of this code. The Legislative Rule-Making Review Committee, as part of its rule review under this article, may begin reviewing a legislative rule upon its filing.

(f) Any agency that has promulgated a legislative rule with a sunset date prior to May 1 of the applicable year, may file a technical amendment with the Secretary of State for the purposes of establishing a sunset date of August 1 of the applicable year.

(g) The Secretary of State shall file a notice of sunset in the State Register within 30 days following the expiration of a legislative rule.

§29A-3-20. Executive review of agency rules, guidelines, policies and recommendations.

(a) All executive agencies with rule-making authority shall:

(1) Review and evaluate all state rules, guidelines, policies and recommendations under their jurisdiction that have similar federal rules, guidelines, policies and recommendations;

(2) Determine whether the state rules, guidelines, policies and recommendations are more stringent than federal counterparts;

(3) Provide for a comment period for all rules, guidelines, policies and recommendations; and

(4) Submit a report to the Joint Committee on Government and Finance and the Legislative Rule-Making Review Committee on or before November 1, 2017, which shall include:

(A) A description of the state rules, guidelines, policies and recommendations that are more stringent than federal counterparts; and

(B) Comments received from the comment period provided for in subdivision (3) of this subsection.

(b) Within four years of the enactment of this law, each executive agency with rule-making authority shall review all of its rules and determine whether the rules should be continued without change, modified or repealed. On or before July 1, 2020, each agency shall submit a report to the Legislative Rule-Making Review Committee which includes the following information for each rule under the agency's jurisdiction:

(1) A description of the rule;

(2) A determination of whether the rule should continue without change, be modified or repealed; and

(3) The reasoning for said determination.