

Form #3

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Debra R. Thorne
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**WEST VIRGINIA
SECRETARY OF STATE
Betty Ireland
ADMINISTRATIVE LAW DIVISION**

Form #1

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A PUBLIC HEARING ON A PROPOSED RULE

AGENCY: WV Department of Environmental Protection - Division of Air Quality TITLE NUMBER: 45

RULE TYPE: Legislative CITE AUTHORITY: WV Code §22-5-4

AMENDMENT TO AN EXISTING RULE: YES ☒ NO ☐

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 6

TITLE OF RULE BEING AMENDED: To Prevent and Control Air Pollution From Combustion of Refuse

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

DATE OF PUBLIC HEARING: July 9, 2007 TIME: 6:00 p.m.

LOCATION OF PUBLIC HEARING: West Virginia Department of Environmental Protection
Dolly Sods Conference Room
601 57th Street, SE
Charleston, WV 25304

COMMENTS LIMITED TO: ORAL ☐ WRITTEN ☐ BOTH ☒

DATE WRITTEN COMMENT PERIOD ENDS: July 9, 2007 TIME: 6:00 p.m.

WRITTEN COMMENTS MAY BE MAILED TO:

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

Public Information Office
Department of Environmental Protection
601 57th Street, SE
Charleston, WV 25304

Legislative Rule-Making

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

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

JUN - 6 2007

Authorized Signature

Review Committee

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: July 26, 2007

TO: **LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

FROM: (Agency Name, Address & Phone No.) WV Department of Environmental Protection
Division of Air Quality
601 57th Street, S.E.

Charleston, West Virginia 25304
Phone: 304-926-0499 ext. 1237

LEGISLATIVE RULE TITLE: 45CSR6 - To Prevent and Control Air Pollution from
Combustion of Refuse

1. Authorizing statute(s) citation W.Va. Code §22-5-4

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
June 6, 2007

b. What other notice, including advertising, did you give of the hearing?
Published notice on June 9th in The Charleston Daily Mail and The Charleston Gazette. Posted
on the Department of Environmental Protection's web site under "Calendar of Events".

c. Date of Public Hearing(s) *or* Public Comment Period ended:
July 9, 2007

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X No comments received

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

July 26, 2007

- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all written correspondence regarding this rule: (Please type)

John A. Benedict, Director
601 57th Street, S.E.
Charleston, WV 25304

Tamra Mowrer, Administrative Secretary
601 57th Street, S.E.
Charleston, WV 25304

Phone: 304 926-0499

Phone: 304 926-0499

Fax: 304 926-0488

Fax: 304 926-0488

e-mail: jbenedict@wvdep.org

e-mail: tmowrer@wvdep.org

- g. **IF DIFFERENT FROM ITEM 'f',** please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

James Mason, Technical Analyst II
601 57th Street, S.E.
Charleston, WV 25304

Phone: 304 926-0499 ext. 1200

Fax: 304 926-0479

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

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

N/A

- b. Date of hearing or comment period:

_____ N/A _____

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

_____ N/A _____

- d. Attach findings and determinations and reasons:

Attached _____ N/A _____

**DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF AIR QUALITY**

BRIEFING DOCUMENT

Rule Title: 45CSR6 - "Control of Air Pollution From Combustion of Refuse"

A. AUTHORITY: W.Va. Code §22-5-4

B. SUMMARY OF RULE:

 This rule establishes emission standards for particulate matter and requirements for activities involving incineration of refuse which are not subject to, or are exempted from regulation under various federal counterpart regulations for specific combustion source categories. This rule also prohibits (with limited exception) open burning and sets forth the registration, permitting, reporting, testing, emergency, natural disaster and exemption provisions for activities involving the combustion of refuse and land clearing debris.

 This rule does not prohibit bonfires, campfires or other forms of open burning for the purposes of personal enjoyment and comfort.

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:

 45CSR6 is part of the West Virginia State Implementation Plan (SIP) approved by the U.S. Environmental Protection Agency to assure attainment and maintenance of attainment with the National Ambient Air Quality Standards for particulate matter.

 The Division of Air Quality intends to streamline West Virginia's waste combustion regulatory structure by revising legislative rules 45CSR6 and 45CSR18 to follow federal combustion source regulatory structure. It is the intent of the Secretary that 45CSR6 (SIP rule) cover activities involving incineration of refuse which is not subject to, or are exempted from regulation under various federal counterpart regulations for specific combustion source categories. It is also the intent of the Secretary that 45CSR18 (federal delegation rule) cover combustion sources identified in Section 129 of the Clean Air Act, with incorporation by reference of federal counterpart language promulgated under 40 CFR Part 60. Section 129 sources subject to 45CSR18 (and exempt from 45CSR6) include large municipal waste combustors, small municipal waste combustion units, hospital/ medical/ infectious waste incinerators, commercial and industrial solid waste incineration units, and other solid waste incineration units.

Therefore, the proposed revisions leave 45CSR6 as a basic open burning/incinerator rule. Federal counterpart language for large municipal waste combustors, small municipal waste combustion units, and commercial and industrial solid waste incineration units has been relocated to 45CSR18. 45CSR6 has new provisions for open burning or incineration of animal or poultry carcasses during a declared state of emergency involving highly contagious animal or poultry disease. The rule also has revised language (and new definitions) for pathological waste incinerators burning at least 90% pathological waste, which are exempted from referenced federal counterpart language in 45CSR18. Other revisions to the rule include a revised title, prohibition of statutory air pollution, addition of new language for posted incinerator operating instructions, a new exemption section, and general language clarification and correction.

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

There is no federal counterpart regulation, thus no determination of stringency is not required.

E. CONSTITUTIONAL TAKINGS DETERMINATION:

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

F. CONSULTATION WITH THE ENVIRONMENTAL PROTECTION ADVISORY COUNCIL:

At its May 21, 2007, and May 30, 2007 meetings, the Environmental Protection Advisory Council reviewed and discussed this rule. (See attached minutes for Council's discussion).

West Virginia Department of Environmental Protection

ADVISORY COUNCIL MEETING MINUTES

Monday – May 21, 2007

1:00 p.m. – 3:00 p.m.

601 57th Street, SE, Charleston, WV

West Virginia Room – 3rd Floor

ATTENDEES:

Advisory Council Members:

Rick Roberts
Karen Price
Bill Raney
Lisa Dooley
Larry Harris
Jackie Hallinan

DEP:

Randy Huffman, Deputy Cabinet Secretary/Director – Division of Mining & Reclamation
Karen G. Watson, Assistant General Counsel
Ken Ellison, Director - Division of Land Restoration
Lisa McClung, Director – Division of Water and Waste Management
John Benedict, Director – Division of Air Quality
Lewis Halstead, DMR
Ken Politan, DMR
Charlie Sturey, DMR
Jessica Greathouse, Chief Communication Officer – WVDEP – Public Information Office
James Martin, Chief, Office of Oil & Gas
Carroll Cather, DWWM
Pam Nixon, Advocate
David L. Vande Linde, Blasting
Jim Mason, DAQ
Mike Zeto, DWWM – EE
Matt Sweeney, DWWM

VISITORS:

Ann Bradley, Spilman Thomas & Battle
Charlie Burd, IOGA
Don Garvin, WVEC
Dave Yaussy, Robinson & McElwee

Randy Huffman, Deputy Cabinet Secretary - West Virginia Department of Environmental Protection called the meeting to order at 1:00 p.m.

Karen Price stated that the Council did not have enough time to review the rules, therefore was requesting to have another meeting to discuss further and the remaining of the Council agreed. The Council will meet May 30, 2007 at 10:00 a.m. – WVDEP – 601 57th Street, SE – Charleston, WV 25304 – West Virginia Room (3001).

Deputy Cabinet Secretary Huffman apologized for the short time period regarding the rules getting out to Council. Randy Huffman then introduced Karen Watson, Assistant General Counsel to discuss with the Council the DEP bills that had passed in the 2007 Regular Legislative Session:

- SB 337 – Establishing New Greenhouse Gas Inventory Program
Approved by Governor – April 4, 2007
- SB 425 – Relating to Water Pollution Control Revolving Fund
Approved by Governor – April 4, 2007
- SB 465 – Establishing Dam Safety Rehabilitation Revolving Fund
Approved by Governor – March 27, 2007
- SB 490 – Relating to Underground Storage Tank Insurance Fund
Approved by Governor – April 3, 2007
- SB 524 – Requiring Proof of Lawful Disposal of Solid Waste
Approved by Governor – March 28, 2007
- SB 588 – Removing Tax Expiration Date on Manufacturing or Production of Synthetic Fuel From Coal
Approved by Governor – April 4, 2007

Karen Watson then gave a brief summary of each proposed rule for the 2008 legislative session:

Air Quality

45CSR6 – Control of Air Pollution from Combustion of Refuse

SUMMARY

Proposed Rule 6 is now a basic open burning/ incinerator rule. Revised scope includes ‘statutory air pollution,’ addition of new language for posted operating instructions and open burning or incineration of animal or poultry carcasses during a declared state of emergency. Except for temporary Air Curtain Incinerators for land clearing debris (DOH jobs) and incineration of animal or poultry remains, most Air Curtain Incinerators will now be exempted under Rule 6 and placed under Rule 18.

COMMENT

Mr. Harris: Why does it allow low-level radioactive waste?

DEP Response: To allow crematories to dispose of bodies with chemo drugs. Does not allow high-level radioactive compounds related to research.

~~Council wanted to know if the agency would accept comments in writing after the meeting (e-mail in comments)~~

DEP Response: Yes

45CSR8 – Ambient Air Quality Standards

SUMMARY

NAAQS rules 45CSR8, 45CSR9 & 45CSR12 have been combined for the 2008 legislative session. Rule 8 is now the complete NAAQS incorporation by reference rule, and 45CSR9 & 45CSR12 will be repealed and replaced. Revisions to SO₂ & PM NAAQS include correction of SO₂ annual primary standard from 0.003 to 0.030 ppm, addition of annual and 24-hour PM_{2.5} standards, and addition of measurement methods for PM_{2.5}. Revisions to CO & Ozone NAAQS include revocation of one-hour ozone standard except for Berkeley & Jefferson counties, identification of one-hour ozone maintenance areas, and addition of 8-hour primary and secondary ozone standards. Revisions to NO₂ and Lead NAAQS include addition of primary and secondary standards for lead, and addition of measurement methods for lead. Revisions also include general language updates, improved citing and consistency.

COMMENT

Mr. Harris: Are we sure we are protecting the public's health? We should not be lowering standards so that our energy being transmitted to other states doesn't pollute our air. Are we aware of EPA's Science Advisory Panel?

DEP Response: CAIR aims to lower emissions at power plants. Utility controls are helping us meet targets earlier. EPA's regional approach has generally been successful and we are seeing tremendous benefits. The agency is aware of the EPA's panel, and EPA is considering more stringent regulations but has not done so yet.

45CSR16 – Standards of Performance for New Stationary Sources

SUMMARY

Revisions to rule incorporate annual incorporation by reference updates and exclusions.

COMMENT

No questions.

45CSR18 – Control of Air Pollution from Combustion of Solid Waste

SUMMARY

CISWI Rule 18 combines and incorporates by reference all current federal Section 111/129 combustion regulation into one rule. Old Rule 24 will be repealed and replaced. New exemption section is consistent with revised Rules 6, 25 and 34. Revisions also include revised scope, extensive federal counterpart language updates, improved citing and consistency.

COMMENT

No questions.

45CSR25 – Control of Air Pollution from Hazardous Waste Treatment, Storage and Disposal Facilities

SUMMARY

Revisions to the proposed rule include general annual incorporation by reference and revisions required to maintain consistency with the DWWM's rule 33CSR20 and federal counterpart regulation. Addition of direct incorporation by reference of new provisions published in the Federal Register. Language for pathological waste incinerators is revised for clarity.

COMMENT

No questions.

45CSR34 – Emission Standards for Hazardous Air Pollutants

SUMMARY

Rule 34 now combines all NESHAP regulations previously adopted under both Rules 15 & 34. Old Rule 15 will be repealed and replaced. Revisions to Rule 34 incorporate annual NESHAP updates under Parts 61 & 63. Some Part 63 standards affecting non-major sources of hazardous air pollutants are being excluded from incorporation by reference: Oil and Natural Gas; Polyvinyl Chloride and Copolymers; Primary Copper Smelting; Secondary Copper Smelting; and Primary Nonferrous Metals.

COMMENT

No questions.

45CSR39 – Control of Annual Nitrogen Oxides Emissions

SUMMARY

Annual CAIR NO_x Rule - Incorporates revisions to 40 CFR Part 96.

COMMENT

No questions.

45CSR40 - Control of Ozone Season Nitrogen Oxides Emissions

SUMMARY

Ozone Season CAIR NO_x Rule - Incorporates revisions 40 CFR to Part 96.

COMMENT

No questions.

45CSR41 – Control of Annual Sulfur Dioxide Emissions

SUMMARY

Annual CAIR SO₂ Rule - Incorporates revisions to 40 CFR Part 96.

COMMENT

No questions.

45CSR42 – Greenhouse Gas Emissions Inventory Program

SUMMARY

The Greenhouse Gas Inventory Program Rule is authorized by SB337 passed in the 2007 legislative session. The rule establishes a program which requires the reporting and inventory of greenhouse gas emissions by stationary sources which emit more than a *de minimis* amount; inventories greenhouse gas emissions from stationary, area, mobile and biogenic sources, and accounts for reductions, capture and sequestration; provides for: a periodic compilation of a greenhouse gas inventory; a determination whether WV is a net sink or emitter; development of a registry for voluntary reductions; and a determination whether greenhouse gas can be developed as an asset for economic development.

COMMENT

Mr. Raney: Is the exclusion still there for coal preparation activities?

DEP Response: Yes, section 3.2. (45CSR42)

Mr. Raney: How do we quantify sequestration?

DEP Response: Don't think we will get down to stationary source level. Agency will look at area

sources and biogenic activities. Once we get information, we will compile in an inventory.

Division of Water and Waste Management

33CSR9 – Standards for Beneficial use of Filtrate from Water Treatment Plants

SUMMARY

This legislative rule establishes a mechanism and requirements for the permitting, siting, bonding, and use of water treatment plant sludge from water treatment plants that has beneficial properties. This rule applies to the beneficial use of water treatment plant sludge and to any person who seeks approval from the Secretary to beneficially use such sludge within the state. This rule is intended to enhance the resource recovery and recycling goals of article fifteen of chapter twenty-two of the West Virginia Code and to encourage the beneficial use of water treatment plant filtrate. Section 22-15-23 of the West Virginia Code and this rule, and not the provisions of W. Va. Code § 22-15-10 or 33 CSR 1, shall govern the beneficial use of water treatment plant sludge. This rule does not apply to sewage sludge, products derived from sewage sludge, sludges regulated under 33 CSR 8, or materials regulated as hazardous waste under W. Va. Code §§22-18-1, et seq.

COMMENT

Lisa Dooley: Public notice of permits – who bears the cost – there has to be a more efficient way of getting notices out than Class I legal ads. This is a suggestion for the future.

DEP Response: Applicant bears cost – DEP is trying other methods of getting the information out – but not everyone has access to e-mail.

400 people on DEP's mailing list to receive permits by e-mail and we have between 30-40 who receive permits by US mail.

33CSR20 – Hazardous Waste Management System

SUMMARY

This amendment will adopt by reference approximately two years of changes to federal regulations by adopting the federal regulations in effect as of June 1, 2007 consisting of changes that correct errors in previously enacted Dye and Pigment rule and Manifest rule, allow more hazardous waste, allow greater flexibility in SW-846 testing and monitoring, allow more mercury containing devices to be managed as universal waste, streamline permitting process through a standardized permit, allow additional headworks and de minimus waste exemptions, reference Clean Air Act standards for hazardous waste combustors, allow a series of paperwork burden reductions for hazardous waste management facilities, corrects errors in 40 CFR (federal regulations) and excludes cathode ray tubes from the definition of solid waste under certain conditions. Language corrections, updated references and a change as the result of an EPA comment regarding annual groundwater monitoring at corrective action sites are also included in the amended rule. The rule amendment is not projected to require additional operating expenses above current levels as the amendments are generally de-regulatory in nature.

COMMENT

No questions.

33CSR30 – Underground Storage Tanks

SUMMARY

There are several new provisions to reflect the 2005 Federal Energy Act, including: secondary containment requirements for new or replaced tanks or piping; secondary containment requirements for new or replaced fuel dispenser systems; tank eligibility for delivery, deposit or acceptance – enables agency to prevent deposit or delivery to a tank that is not in compliance; and training requirements for individuals who operate, maintain or are responsible to address emergencies from spills or releases from underground storage tank systems.

COMMENT

No questions.

47CSR2 – Requirements Governing Water Quality Standards

SUMMARY

The proposed revisions reflect updates identified during the federally-mandated triennial review of the Water Quality Standards rule. These include proposed additions to the trout water list, new criteria for nutrients, revisions to criteria in Appendix E and a use redesignation in the Guyandotte River Basin.

COMMENT

Mr. Raney: Would like to have the trout water list stay within the agency and be able to discuss the science on a case-by-base basis before the EQB, not the Legislature.

DEP Response: The DEP believes the scientific basis for the proposed trout streams is clear and does not need to be litigated before the EQB.

Mr. Harris: Commented on the changes in Appendix E and asked whether the formula change for copper and cadmium resulted in a more or less stringent standard.

DEP Response: The changes in Appendix E are recommended by EPA, updating MCL's, etc. The revised hardness formulas represent EPA's latest science.

47CSR10 – National Pollutant Discharge Elimination System (NPDES)

SUMMARY

The proposed revisions to the National Pollutant Discharge Elimination System Rule reflect updates/additions made to the various federal regulations that govern the NPDES program. The proposed changes also include specific language in section 14 of the rule relating to the Pretreatment Program to ensure that the rule is consistent with the most recent federal pretreatment regulations in 40 CFR Part 403.

COMMENT

No questions.

47CSR34 – Dam Safety

SUMMARY

The proposed revisions establish requirements governing the disbursement and use of moneys in the Dam Safety Rehabilitation Revolving Fund, authorized by SB 465 in the 2007 legislative session.

COMMENT

Ms. Hallinan: Any progress being made in reducing the number of deficient dams?

DEP Response: Not very much. The fund initiative is badly needed.

60CSR5 – Antidegradation Implementation Procedures

SUMMARY

Antidegradation is a requirement of the federal Clean Water Act intended to preserve the existing quality of the State's waters and to prevent and/or minimize future degradation. The rule was first adopted in 2001 and establishes four levels, or tiers, of protection for state waters, Tiers 1, 2, 2.5 and 3. Each tier provides a graduated level of protection used during the NPDES permit issuance process. The proposed revisions to the rule carry forward the agency's antidegradation implementation efforts, and move the Tier 2.5 streams that had been on the "presumptive" list in Appendix C to a final proposed list in Appendix A. The agency is proposing a total of 156 streams be included on the list. The list of 156 waters is comprised of the 37 waters that did not receive objections in the formal objection period, those waters that contain reproducing trout and are 100% on public land, those waters listed as high quality on public land based on their high biological scores, and Loop Creek.

COMMENT

Mr. Harris: Suggested we file with 309 streams instead of 156 streams because Legislature will further reduce.

Jackie Hallinan: The program is a good idea.

Meeting was adjourned by Deputy Cabinet Secretary Randy Huffman.

West Virginia Department of Environmental Protection

ADVISORY COUNCIL MEETING MINUTES

Wednesday – May 30, 2007

10:00 a.m. – 12:00 p.m.

601 57th Street, SE, Charleston, WV

West Virginia Room – 3rd Floor

ATTENDEES:

Advisory Council Members:

Rick Roberts
Karen Price
Bill Raney
Larry Harris - Teleconference
Jackie Hallinan

DEP:

Randy Huffman, Deputy Cabinet Secretary/Director –Division of Mining & Reclamation
Karen G. Watson, Assistant General Counsel
Lisa McClung, Director – Division of Water and Waste Management
John Benedict, Director – Division of Air Quality
Jessica Greathouse, Chief Communication Officer – WVDEP – Public Information Office
Pam Nixon, Advocate
Jim Mason, DAQ
Mike Zeto, DWWM – EE
John Morgan, DWWM
Scott Mandirola, DWWM
Greg Adolfson, PIO

VISITORS:

Dave Yaussy
Brittany Carns
Joe Gollehon
Gregory Hoyer
Jeff Mauzy
Amy Christy

Randy Huffman, Deputy Cabinet Secretary - West Virginia Department of Environmental Protection called the meeting to order at 10:00 a.m. Advisory Council Member Larry Harris joined the meeting via teleconference. Deputy Cabinet Secretary Huffman then turned the meeting over to Karen Watson, Assistant General Counsel for the West Virginia Department of Environmental Protection. Karen informed the Council that the agency had received comments from several Council members and those comments would be appended to the minutes. (see attached) She explained the agency

had representatives from each of the programs to answer questions for the rules identified in those comments. She also explained the agency had made several changes in the rules as a result of those comments.

Air Quality

45CSR6 – Control of Air Pollution from Combustion of Refuse

SUMMARY

Proposed Rule 6 is now a basic open burning/ incinerator rule. Revised scope includes ‘statutory air pollution,’ addition of new language for posted operating instructions and open burning or incineration of animal or poultry carcasses during a declared state of emergency. Except for temporary Air Curtain Incinerators for land clearing debris (DOH jobs) and incineration of animal or poultry remains, most Air Curtain Incinerators will now be exempted under Rule 6 and placed under Rule 18.

COMMENT

Larry Harris: Had raised the issue of “low-level radioactive waste” in the last meeting.

DEP Response: DEP has removed the chemotherapeutic waste and low-level radioactive waste provisions from the proposed rule. The proposed rule does not in any way affect current medical waste incineration rules now on the books.

45CSR8 – Ambient Air Quality Standards

SUMMARY

NAAQS rules 45CSR8, 45CSR9 & 45CSR12 have been combined for the 2008 legislative session. Rule 8 is now the complete NAAQS incorporation by reference rule, and 45CSR9 & 45CSR12 will be repealed and replaced. Revisions to SO₂ & PM NAAQS include correction of SO₂ annual primary standard from 0.003 to 0.030 ppm, addition of annual and 24-hour PM_{2.5} standards, and addition of measurement methods for PM_{2.5}. Revisions to CO & Ozone NAAQS include revocation of one-hour ozone standard except for Berkeley & Jefferson counties, identification of one-hour ozone maintenance areas, and addition of 8-hour primary and secondary ozone standards. Revisions to NO₂ and Lead NAAQS include addition of primary and secondary standards for lead, and addition of measurement methods for lead. Revisions also include general language updates, improved citing and consistency.

COMMENT

Karen Price: Section 4.2.c – PM_{2.5} Maximum 24-Hour Average Concentration. The level for the 24-hour primary and secondary standard states 35 ug/m³. This should be 65 ug/m³, pursuant to 40 CFR 50.7.

DEP Response: On October 17, 2006, the federal NAAQS regulation changed from 65 to 35.

Larry Harris: Restated his concern that the standards may not be stringent enough to protect public health. He also restated his question about the antidegradation language struck from the rule.

DEP Response: DEP cannot lower the NAAQS standards below that of federal levels unless the provisions for the stringency test in §22-1-3a are fully met. 45CSR14, in its entirety, has wholly replaced the intent of the relic anti-degradation language struck in proposed Rule 8.

45CSR39 – Control of Annual Nitrogen Oxides Emissions

45CSR40 - Control of Ozone Season Nitrogen Oxides Emissions

Ozone Season CAIR NO_x Rule - Incorporates revisions 40 CFR to Part 96.

Annual CAIR NO_x Rule - Incorporates revisions to 40 CFR Part 96.

45CSR41 – Control of Annual Sulfur Dioxide Emissions

Annual CAIR SO₂ Rule - Incorporates revisions to 40 CFR Part 96.

COMMENT

Karen Price: Asked why the opt-in language was deleted from each of these rules.

DEP Response: has removed the opt-in provisions in the three CAIR rules so that West Virginia can say that CAIR equals NO_x RACT for EGUs under the PM_{2.5} implementation rule.

45CSR42 – Greenhouse Gas Emissions Inventory Program

SUMMARY

The Greenhouse Gas Inventory Program Rule is authorized by SB337 passed in the 2007 legislative session. The rule establishes a program which requires the reporting and inventory of greenhouse gas emissions by stationary sources which emit more than a *de minimis* amount; inventories greenhouse gas emissions from stationary, area, mobile and biogenic sources, and accounts for reductions, capture and sequestration; provides for: a periodic compilation of a greenhouse gas inventory; a determination whether WV is a net sink or emitter; development of a registry for voluntary reductions; and a determination whether greenhouse gas can be developed as an asset for economic development.

COMMENT

Karen Price and Larry Harris: Both asked about the definitions of “anthropogenic” and “biogenic” in the rule and asked for examples of each.

DEP Response: An example of an anthropogenic source is the coal extraction process and an example of a biogenic source is the erosion of soil exposing a coal seam. The agency does not plan

to ask sources to report biogenic activities. In order to receive credit a source must report all of its emissions.

Karen Price: Can the reporting requirement in section 4.1 be made consistent with the emissions inventory requirements.

DEP Response: The date in the rule is March 31st and is the same as the emissions inventory date.

Karen Price: Does not believe fees should be required for greenhouse gas reporting.

DEP Response: The agency will consider the issue.

Karen Price: The last sentence in section 5.3 allowing the Secretary to request information is not authorized by statute.

DEP Response: It is authorized by the statute.

Karen Price: There should be a reasonable protocol for reporting emissions.

DEP Response: D AQ purposely wrote the rule in a manner flexible to the Secretary, as greenhouse gas reduction quantification protocols are still being developed at this time.

Karen Price: Is WV going to sign on to the climate registry or are we going to have our own?

DEP Response: In order to trade, we have to be consistent with other programs, but we do not want to be more specific in the rule.

Bill Raney: The exemption in section 3.2 includes language referring to sources covered by chapter 22-3 as well as sources required to report emissions. We are concerned this may take the exemption in the statute away.

DEP Response: While the agency did not want to require mining extraction to report emissions, thermal dryers associated with coal prep plants often have huge emissions of greenhouse gases. That is the reason the statute and rule only exempt sources permitted under chapter 22-3.

Division of Water and Waste Management

33CSR9 – Standards for Beneficial use of Filtrate from Water Treatment Plants

SUMMARY

This legislative rule establishes a mechanism and requirements for the permitting, siting, bonding, and use of water treatment plant sludge from water treatment plants that has beneficial properties. This rule applies to the beneficial use of water treatment plant sludge and to any person who seeks approval from the Secretary to beneficially use such sludge within the state. This rule is intended to enhance the resource recovery and recycling goals of article fifteen of chapter twenty-two of the West Virginia Code and to encourage the beneficial use of water treatment plant filtrate. Section 22-

15-23 of the West Virginia Code and this rule, and not the provisions of W. Va. Code § 22-15-10 or 33 CSR 1, shall govern the beneficial use of water treatment plant sludge. This rule does not apply to sewage sludge, products derived from sewage sludge, sludges regulated under 33 CSR 8, or materials regulated as hazardous waste under W. Va. Code §§22-18-1, et seq.

COMMENT

Larry Harris: DEP made changes to this rule during the Interims process last year, and the rule now requires a permit for both short-term and long-term applications. This is a good change. However, we feel that most of the information required in Section 7.3. Permit Application Requirements for long-term permits should also be required for short-term permits.

DEP Response: The requirements of section 7.3 were intended to be directed toward facilities that proposed to land apply filtrate as the beneficial use. It was intended to be applicable to both, if land application was the proposed method of reuse. Section 7.3 will be revised to more clearly reflect the applicability of the requirement for both long-term and short-term, if land application is the proposed beneficial reuse.

Rick Roberts and Larry Harris: Regarding the environmental effects of disposal of sludge are the values in Table 1 of the rule sufficient?

DEP Response: The Table 1 values are the same as the sewage sludge levels in DEP's other rules, and the agency believes they are supported by sound science.

Rick Roberts and Larry Harris: Mr. Harris expressed concern with the distinction between "beneficial reuse" and "disposal." Mr. Roberts believes that his concern is satisfied by the language in section 3.1.b.1.

Rick Roberts: The rule should include general permits as proposed.

Larry Harris: Only individual permits should be allowed under the rule.

DEP Response: There will be public notice in the general permit process.

33CSR30 – Underground Storage Tanks

SUMMARY

There are several new provisions to reflect the 2005 Federal Energy Act, including: secondary containment requirements for new or replaced tanks or piping; secondary containment requirements for new or replaced fuel dispenser systems; tank eligibility for delivery, deposit or acceptance – enables agency to prevent deposit or delivery to a tank that is not in compliance; and training requirements for individuals who operate, maintain or are responsible to address emergencies from spills or releases from underground storage tank systems.

COMMENT

Karen Price: Section 6.1. states "....including any person who accepts a delivery order, accepts payment, delivers or deposits product into an underground storage tank.....". The portion that states "...accepts payment..." should be removed from this section because those individuals within a company who accept payment or make payments most often do not know anything about the underground storage tank (UST), the operation of the UST, or the current regulatory status of the UST.

DEP Response: This language will give the agency a better handle on transporters and middle-men involved in the process.

Karen Price: Section 7.3.a.1. states "....the methodology for verifying attendance, the date, time and location of the course, the name of the offering organization, the credentials of the instructors, and a certification that the technology or methods.....".

1. The portion that states "...the date, time and location of the course,...." should be deleted. For large companies with many UST installations and locations there can be numerous individuals that need to be trained. Training will most likely occur on multiple dates, times, and locations that may not always be known until just prior to the training event. When new employees are hired training might occur on short notice and for one individual. The burden of having to report the dates, time and locations would hinder and slow down the training process and restrict a company's ability to comply.

2. The portion that states "...the credentials of the instructors..." should be removed. Credentials will vary from instructor to instructor new instructors might be utilized, and a company might not know which instructors will be used at the various training sessions until just prior to the training session. In addition, the course content is the main issue of concern and should be the main focus in obtaining State approval of a training program.

DEP Response: Regarding dates, times and location of the training the agency will not require the information prior to the training. As far as the credentials of the instructor the agency needs this information as part of its curriculum review, in this case before the training.

Karen Price: Section 7.3.a.2 - This section states that a nonrefundable application fee of \$280 must be submitted with the application. Larger companies may have one training program, but administer the training on multiple dates, times and locations. Having to submit an application for approval of the training program each time the program is administered would be cost prohibitive, burdensome, and would hinder the training process.

DEP Response: The agency agrees and believes the rule only requires a one-time fee.

Rick Roberts: Regarding the \$5.00 per ton fee, how does a source measure the tonnage? Perhaps the agency should consider using a cubic-yard approach.

DEP Response: The agency will consider.

47CSR2 – Requirements Governing Water Quality Standards

SUMMARY

The proposed revisions reflect updates identified during the federally-mandated triennial review of the Water Quality Standards rule. These include proposed additions to the trout water list, new criteria for nutrients, revisions to criteria in Appendix E and a use redesignation in the Guyandotte River Basin.

COMMENT

Larry Harris: Does the use removal in section 7.2.d follow the federal Clean Water Act requirements?

DEP Response: Yes, the agency followed all the requirements, federal and state, and required extensive information from the company. The agency also conducted two public meetings.

Bill Raney: Mr. Raney repeated his concern with the listing of trout waters in the rule and the fact that the list has to be approved by the Legislature. Karen Price agreed with this comment. Jackie Hallinan and Larry Harris did not agree with this comment.

Karen Price: Questioned the need for Appendix D, because the Category C use applies to all state waters.

DEP Response: Agency will consider.

Karen Price: Will the agency consider not making use removals go through the legislative process.

DEP Response: The agency decided not to include any language pertaining to this issue at this point in time, but will be subjecting this issue to the public participation process in the coming months.

60CSR5 – Antidegradation Implementation Procedures

SUMMARY

Antidegradation is a requirement of the federal Clean Water Act intended to preserve the existing quality of the State's waters and to prevent and/or minimize future degradation. The rule was first adopted in 2001 and establishes four levels, or tiers, of protection for state waters, Tiers 1, 2, 2.5 and 3. Each tier provides a graduated level of protection used during the NPDES permit issuance process. The proposed revisions to the rule carry forward the agency's antidegradation implementation efforts, and move the Tier 2.5 streams that had been on the "presumptive" list in Appendix C to a final proposed list in Appendix A. The agency is proposing a total of 156 streams be included on the list. The list of 156 waters is comprised of the 37 waters that did not receive objections in the formal objection period, those waters that contain reproducing trout and are 100% on public land, those waters listed as high quality on public land based on their high biological scores, and Loop Creek.

COMMENT

Larry Harris: Scientific criteria should be used to add or delete streams from the Tier 2.5 list.

Rick Roberts: Can the SRF program give priority to facilities impacted by the Tier 2.5 list?

DEP Response: Agency will take this under advisement.

Larry Harris: Is the nomination process adequate?

DEP Response: The agency believes the process is generally adequate and workable. If, however a large number of streams are nominated at one time, the individual notification requirements may be difficult and costly.

At this point in the meeting, Bill Raney submitted written comments regarding several mining rules. (see attached)

60CSR8 - Environmental Excellence Program

Greg Adolfson summarized the rule revisions. He said the changes would provide more flexibility for the agency to approve or disapprove of incentives in the program, as well as other flexibilities.

SUMMARY

Changes are being proposed to the Environmental Excellence Program Rule (60CSR8) to better align with and follow the momentum of the United States Environmental Protection Agency's National Environmental Performance Track Program. Additionally, the primary purpose for the changes is to give more flexibility to the Department of Environmental Protection Cabinet Secretary in areas such as: Eligibility Criteria for Participation (section 4); Environmental Performance Record (section 5); Environmental Management System (section 6); Public Participation (section 8); Incentives (section 9); Procedures for Application (section 10); and Annual Performance Report (section 14). Language, such as "may include, but will not be limited to, the following," has been added to allow for this flexibility.

COMMENT

Rick Roberts: Why is section 6.2 completely deleted?

DEP Response: The section is not completely deleted, just the 1996 standards. This will allow the agency to use the most current standards.

Bill Raney: How many companies are participating in the program?

DEP Response: There are two in the National Program, Toyota and Dow.

Mr. Raney: Suggested we start with 39.

Mr. Harris: Asked about section 2.11 in the definitions regarding “trading” and if it includes cross-pollutant trading.

DEP Response: The definitions were unchanged from the ones the EQB first adopted in 2001. The agency does not think it allows cross-pollutant trading.

Division of Mining and Reclamation

38CSR2 – Surface Mining Reclamation Rule

SUMMARY

§38-2-3.2.g. Notice of Technical Completeness is new language and is to provide the public an opportunity to review the application once technical review is completed. §38-2-5.4.e.1 is removing language that is contrary to returning the natural drainway to its original pattern, profile, and dimensions once drainage control structure is removed. The changes in §38-2-5.6 clarify what operations may be exempt from conducting a “Surface Water Runoff Analysis”, monitoring requirements and removes phase-in compliance schedule that expired on June 19, 2006. Changes to §38-2-6 removes duplication of rules for Blasting and after this change, all the requirements for blasting will be contained in Surface Mining Blasting Rule, Title 199 Series 1. New §38-2-11.8 titled “Bond Credit for Reclamation of Bond Forfeiture Site under a No Cost Reclamation Contract” encourages qualified operators to undertake reclamation of bond forfeiture sites for the purpose of eliminating hazards to human health and safety, abating pollution of surface and ground waters and the contribution of sediment to adjacent areas, and restoring land to beneficial uses. Changes in §38-2-14.15.c.2 and 14.15.d.3 are clarifying contemporaneous reclamation rules on excess spoil disposal. The changes in 14.15.e remove a phase-in compliance schedule that expired in 2004. The changes in §38-2-23 are being made to make the mining rule consistent with the proposed changes in the State’s NPDES Mining Rules.

COMMENT

No questions.

47CSR5A – Individual State Certification of Activities Requiring a Federal Permit

SUMMARY

The proposed amendments to this rule are being made to adopt into rule requirements that have been applied through past practices for coal related activities requiring mitigation and issuance of a 401 State Certification of a 404 Permit. Ratios for monetary compensation for temporary impacts are detailed. Monetary compensation for permanent impacts to wetlands from coal related activities are made the same as non-coal related. Additional economic and stream measurement information is being requested to be added to the 401 application.

COMMENT

Mr. Harris: How do we determine the "ordinary high water mark" under section 4.2.f.4 and how is it determined on a small stream?

DEP Response: The US Army Corps of Engineers is responsible for determining "waters of the U.S." under the rule.

Mr. Harris: What are the differences between coal and non-coal impacts and how are they determined?

DEP Response: Rule has to be consistent with statute.

47CSR30 – WV/NPDES Rules for Coal Mining Facilities

SUMMARY

The proposed amendments to this rule are being made to allow general clean-up of sections referencing outdated names of agencies and references to the EQB governing rule making. This rule addresses the Secretary as being the person as head of all actions. References to the "Director" are changed to "Secretary" to eliminate the need to distinguish between the Director of Mining and Reclamation and the Director of Water and Waste Management when issuing a coal related WV/NPDES permit. This rule adds provision for storm-water coverage for certain minimal activities without the requirement for modification through application to the permit. This rule also provides for an advanced approval of transfer of a WV/NPDES Permit to coincide with the advanced approval of the corresponding Article 3 Permit. This rule clarifies provisions related to coal remining operations and provides a remining water quality standard variance for any parameter of concern.

COMMENT

No questions.

199CSR1 - Surface Mining Blasting Rule

SUMMARY

The proposed amendments change the following sections: 2.27. Adds the definition of "other structure" (structures built by the permittee); 2.38 Clarifies definition of "surface mine operation"; 3.2.C. Plan for blasting should include seismic monitoring when within 1000 ft of a structure, and performance specifications for blasting seismographs; 3.4. Areas of blasting that will be regulated for shaft and slope development; 3.6.c.3. Requiring field practice guidelines for blasting seismographs; 3.7a Request for alternate limits must have written consent of the owner; 3.9. Minimum qualifications and continuing education requirements for surveyor; 4.1.b. Allows the agency to consider blasting experience of applicants that was gained prior to the last three years; 4.5.d. Requires applicants who have been suspended or revoked in other states to show cause as to why should be issued a certification; 4.9.a.2 process for issuing a temporary suspension to a blaster and appeal rights; 4.13 Clarifies blasters responsibility of training the blasting crew; 5.2.a.3&4 Clarifies

the investigations process on a claim of blasting damage; 6.1 Requiring that any arbitrators that are removed from the list must be done with cause; and 7.3 Detonators and initiation systems are not considered for calculation of fees.

COMMENT

No questions.

Office of Oil and Gas

35CSR3 – Coalbed Methane Wells Rule

SUMMARY

The WVDEP, Office of Oil and Gas is proposing to revise existing rule 35CSR3. Series 3 is a legislative rule in place to enforce the provisions in WV Code §22-21-1 et seq., Coalbed Methane Wells and Units, commonly referred to as the Coalbed Methane Act. The revisions will: Address the establishment of special field rules to promote the orderly development of coalbed methane fields; Protect the correlative rights of all owners located within the geographic area for which special field rules are established; Provide a process by which the Review Board may hold a hearing on an application for special field rules and issue such rules; Insert language (Section 17) which was inadvertently deleted from the rule during the 2006 legislative session. This language existed in the rule prior to the revisions in 2006.

COMMENT

Is this the same rule that went through last year?

DEP Response: Yes, except for two sections that had changes:

16.2.e – advertisement “15 days”

16.1.6.1 – “FOIA” issue that came out of the LRMRC.

Mr. Raney: Is this the product of the stakeholders group?

DEP Response: Yes.

Ms. Hallinan: What is a field rule?

DEP Response: Special spacing procedure for coalbed methane wells. It deals with pooling and royalty issues.

Division of Land Restoration

33CSR10 – Recycling Assistance Grant Program

SUMMARY

This rule sets out guidelines and procedures for providing assistance grants to local governments and other interested parties for the purpose of planning, initiating, expanding, or upgrading recycling programs, provide related public education programs, and assist in recycling market procurement efforts.

COMMENT

No questions.

60CSR3 – Voluntary Remediation and Redevelopment Rule

SUMMARY

This legislative rule establishes the eligibility, procedures, standards and legal documents required for voluntary and brownfield cleanups and updates risk protocol standards, including updates to the deminimis table. It also includes changes to the land use covenant section to incorporate the components of the Uniform Covenant Act.

COMMENT

Ms. Dooley: Are there grant dollars for brownfields?

DEP Response: Yes

The next scheduled Advisory Council Meeting will be on May 30, 2007 at 10:00 a.m. Mr. Huffman asked the Council members to notify the DEP of which rules they want to discuss so the right agency person can be at the meeting. He also asked them to submit comments prior to the meeting if possible.

DO, temperature, and fecal coliform. We feel that they can assess these parameters and should not treat them separately.

45CSR42 Greenhouse Gases

The fact that the DEP is beginning to deal with the process of greenhouse gases that lead to global warming is commendable. Some questions on the rule were raised by Dr. Kotcon:

The greenhouse gases emissions inventory rule (45-42-1) needs to be
>strengthened considerably. The sections on emissions inventory
>(section 5, pages 3-4) is so vague as to be meaningless, especially
>as it deals with sequestration for area sources and sinks. I do not
>see how any meaningful data can be generated with this language.
How would the carbon sequestration be estimated? Has there been studies estimating the biogenic incorporation of CO₂ per acre of woodland, for example? The rule appears to be a vague in how it would be implemented.

Air Quality and Emission Rules (see below)

45CSR8 Ambient Air Quality Standards

Don Garvin pointed out that the the antidegradation language was removed from this rule, and it was explained that the agency feels these provisions are now covered in 45-CSR-14("Prevention of Significant Deterioration.") However, the language that was stricken does not appear in 45-CSR-14, and the stricken language is the ONLY statement in the rules of West Virginia's antidegradation policy for air quality. The environmental community still believes the stricken language should be restored.

Here is what should be reinstated:

§45-8-2. Anti-Degradation Policy.

2.1. Pursuant to the best interests of the State of West Virginia, it is the objective of the Secretary to obtain and maintain the cleanest air possible, consistent with the best available technology.

2.2. Where the present ambient air is of better quality than the established standards, the Secretary will develop long-range plans to protect the difference between the present quality and the established standards. The plans will be based upon the best available forecasts of probable land and air uses in these areas of high air quality.

2.3. The air quality of these areas will not be lowered unless it has been clearly demonstrated to the Secretary that such a change is justifiable as a result of necessary economic or social development and will not result in statutory air pollution. This will require that any industrial, public, or private project or development which could constitute a new source of air pollutants, within an area of such high air quality, provide the best practicable control available under existing technology as part of the initial project or development.

45CSR41 Control of Annual SO₂ emissions

45CSR6 Control of Air Pollution from Refuse Combustion

45CSR39 Nitrogen Oxides

I raised the general concern whether the standards for air quality were consistent with the EPA guidelines or not. Further, were any recognized health authorities consulted when these levels were determined? I also raised the issue that West Virginia is increasing supplying electricity to the population east of our mountains. New transmission lines are proposed that are to be connected with coal burning power plants. Billy Jack Gregg, Consumer Advocate for the WV PSC has pointed out that the states receiving our generated power will not permit generation plants in their region. They are concerned about air pollution and its various effects. But they need power, so they turn to West Virginia. This helps the coal industry and generation plants, but puts the health of West Virginians in jeopardy. I feel that our air quality and emission limits should be even more stringent than the EPA calls for in order to protect our citizens. This should be particularly true for power plants that export electricity.

Dr. Kotcon has raised the following issues:

45-CSR-8 Ambient Air Quality Standards

The standards for PM_{2.5} and Ozone are not adequately protective. I recommend that the standards be lowered from 15 $\mu\text{g}/\text{m}^3$ to 13 $\mu\text{g}/\text{m}^3$ in section 4.2.b., and from 0.08 ppm to 0.07 ppm in section 4.4.b.

The air standards (45-8-1) retains the standards for PM_{2.5} and ozone
>that the EPA Clean Air Scientific Advisory Council has already
>determined to be inadequate. Keeping these old standards will kill
>dozens or hundreds of West Virginians each year.

>The rule on refuse combustion (45-6-1) attempts to revise the
>definition of low-level radioactive waste and revives the
>Below-Regulatory_Concern (BRC) issue from some years ago. It also
>creates a large number of exemptions for "temporary" pollution
>sources. I am not yet sure if this re-opens old battles over
>medical waste incineration, but this was a really hot issue a few
>years back.

Questions/Comments on DEP's 2007 Proposed Rules

Comment submitted
by Karen Price at
Council
meeting
5/30/07

- 45 CSR 8 Ambient Air Quality Standards

Section 4.2.c – PM_{2.5} Maximum 24-Hour Average Concentration. The level for the 24-hour primary and secondary standard states 35 ug/m³. This should be 65 ug/m³, pursuant to 40 CFR 50.7.

- 45 CSR 39, 45 CSR 40, 45 CSR 41

The opt-in unit language is deleted from each of these rules. What is the purpose for the deletion of these provisions?

- 33 CSR 30, Underground Storage Tank Rules

Section 6.1. states "...including any person who accepts a delivery order, accepts payment, delivers or deposits product into an underground storage tank.....". The portion that states "...accepts payment..." should be removed from this section because those individuals within a company who accept payment or make payments most often do not know anything about the underground storage tank (UST), the operation of the UST, or the current regulatory status of the UST.

Section 7.3 a.1. states " ...the methodology for verifying attendance, the date, time and location of the course, the name of the offering organization, the credentials of the instructors, and a certification that the technology or methods...."

1. The portion that states "...the date, time and location of the course,..." should be deleted. For large companies with many UST installations and locations there can be numerous individuals that need to be trained. Training will most likely occur on multiple dates, times, and locations that may not always be known until just prior to the training event. When new employees are hired training might

occur on short notice and for one individual. The burden of having to report the dates, time and locations would hinder and slow down the training process and restrict a company's ability to comply.

2. The portion that states "...the credentials of the instructors..." should be removed. Credentials will vary from instructor to instructor new instructors might be utilized, and a company might not know which instructors will be used at the various training sessions until just prior to the training session. In addition, the course content is the main issue of concern and should be the main focus in obtaining State approval of a training program.

Section 7.3 a 2 - This section states that a nonrefundable application fee of \$280 must be submitted with the application. Larger companies may have one training program, but administer the training on multiple dates, times and locations. Having to submit an application for approval of the training program each time the program is administered would be cost prohibitive, burdensome, and would hinder the training process. The State should clarify or make provision for a company to submit one application for the training program that will be administered to all company USI facilities. This will make the \$280 application fee reasonable and the application process less burdensome.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULESRule Title: 45CSR6 - "Control of Air Pollution from Combustion of Refuse"Type of Rule: X Legislative Interpretive ProceduralAgency: Division of Air QualityAddress: 601 57th Street SE
Charleston, WV 25304Phone Number: 926-0475Email: tmowrer@wvdep.org**Fiscal Note Summary**

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The proposed revisions to this rule should cause no additional impact on costs and revenues of state government.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR

| Effect of Proposal | 2008 Increase/Decrease (use "-") | 2009 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 & Alterations | 0 | 0 | 0 |
| Assets | 0 | 0 | 0 |
| Equipment | 0 | 0 | 0 |
| Other | 0 | 0 | 0 |
| 2. Estimated Total Revenues | 0 | 0 | 0 |

Rule Title: 45CSR6 - "Control of Air Pollution from Combustion of Refuse"

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

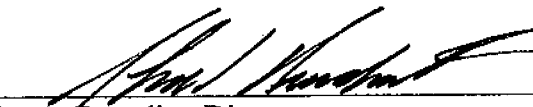
The proposed revisions to this rule will have a minimal effect on the costs to the Division of Air Quality for continued implementation of this rule. Costs are covered under previous cost estimates.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

Date: June 1, 2007

Signature of Agency Head or Authorized Representative



John A. Benedict, Director

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

SERIES 6
~~TO PREVENT AND CONTROL~~ OF AIR POLLUTION FROM COMBUSTION OF REFUSE

§45-6-1. General.

1.1. Scope.

1.1.a. This rule establishes emission standards for particulate matter and requirements for activities involving incineration of refuse which are not subject to, or are exempted from regulation under a federal counterpart for specific combustion sources. This rule also prohibits (with limited exception) open burning and sets forth the registration, permitting, reporting, testing, emergency, natural disaster and exemption provisions for activities involving the combustion of refuse and land clearing debris.

~~1.1.a: 1.1.b. The purpose of this rule is to prevent and control air pollution from combustion of refuse.~~ Neither compliance with the provisions of this rule nor the absence of specific language to cover particular situations constitutes approval or implies consent or condonement of any emission which is released in any locality in such manner or amount as to cause or contribute to ~~undesirable levels of air contaminants~~ statutory air pollution. Neither does it exempt nor excuse anyone from complying with other applicable laws, ordinances, regulations or orders of governmental entities having jurisdiction over combustion of refuse or open burning.

~~1.1.b: 1.1.c.~~ All persons engaged in any form of combustion of refuse shall give careful consideration to the effects of the resultant emissions on the air quality of the area(s) affected by such burning. Important considerations include, but are not limited to, the location and time of burning, the type of material being burned

and the potential emissions and the prevailing meteorological conditions. Persons failing to give due consideration to these factors will be in violation of this rule.

~~1.1.c: 1.1.d.~~ It is the intent of the ~~Director~~ Secretary that all incorporated areas and other local governmental entities prohibit open burning and develop alternative methods for disposal of ~~waste material refuse~~. If such action is not taken in any air basin, air quality control region or other such areas as the ~~Director~~ Secretary may designate, then such action may be taken by the ~~Director~~ Secretary to ~~insure~~ ensure compliance with air quality standards.

1.2. Authority. -- W.Va. Code §22-5-~~1 et seq~~ §22-5-4.

1.3. Filing Date. -- ~~June 21, 2001~~.

1.4. Effective Date. -- ~~July 1, 2001~~.

1.5. Former Rules. -- This legislative rule amends 45CSR6 "To Prevent and Control Air Pollution From Combustion of Refuse" which was filed on ~~June 2, 2000~~ June 21, 2001, and which became effective ~~August 31, 2000~~ July 21, 2001.

§45-6-2. Definitions.

2.1. "Agency Administrator" means a National Park Service Park Superintendent, Bureau of Indian Affairs Agency Superintendent, U.S. Forest Service Forest Supervisor, Bureau of Land Management District Manager, Fish and Wildlife Service Refuge Manager, State Forest Officer, Fire Chief, or an authorized designee

thereof.

~~2.1.~~ 2.2. "Air Curtain Incinerator" means an incinerator that operates by forcefully projecting a curtain of air across an open chamber or pit in which combustion occurs. Incinerators of this type can be constructed above or below ground and with or without refractory walls and floor. (Air curtain incinerators are not to be confused with conventional combustion devices with enclosed fireboxes and controlled air technology such as mass burn, modular, and fluidized bed combustors.)

~~2.2.~~ 2.3. "Air Pollution"; or 'statutory air pollution' shall have the meaning ascribed to it in W.Va. Code §22-5-2.

~~2.3.~~ 2.4. "Air Pollution Control Equipment" means any equipment used for collecting or converting gasborne particulate or gaseous materials for the purpose of preventing or reducing emission of these materials into the open air.

~~2.4.~~ ~~"Clean Lumber" means wood or wood products that have been cut or shaped and include wet, air-dried, and kiln-dried wood products. Clean lumber does not include wood products that have been painted, pigment-stained, or pressure-treated by compounds such as chromate copper arsenate, pentachlorophenol, and creosote.~~

~~2.5.~~ ~~"Director" means the director of the division of environmental protection or such other person to whom the director has delegated authority or duties pursuant to W. Va. Code §§22-1-6 or 22-1-8.~~

2.5. "CFR" means the Code of Federal Regulations published by the Office of the Federal Register, National Archives and Records Service, General Services Administration.

2.6. "Flare"; or 'flare stack' means and includes a combustion source normally comprised of, but not limited to, a length of stack or pipe which has an attached burner mechanism designed

to destroy liquid or gaseous material with an open or semi-enclosed flame.

2.7. "Incineration" means the destruction of combustible refuse by burning in a furnace designed for that purpose. For the purposes of this rule, the destruction of any combustible liquid or gaseous material by burning in a flare/flare flare or flare stack, thermal oxidizer or thermal catalytic oxidizer stack shall be considered incineration.

2.8. "Incinerator" means any device used to accomplish incineration.

2.9. "Incinerator Capacity" shall be the manufacturer's or designer's guaranteed maximum charging rate or such other rate as may be determined by the ~~Director~~ Secretary in accordance with good engineering practices. In case of conflict the determination by the ~~Director~~ Secretary shall govern. For the purpose of this rule, the total of the capacities of all furnaces within one system shall be considered as the "Incinerator Capacity".

2.10. "Industrial Waste Incinerator" means an incinerator which is used to incinerate gaseous, liquid, semi-liquid and/or solid by-product waste from industrial sources.

2.11. "Land Clearing Debris" means that vegetative material generated by clearing of land for purposes of preparation for development, construction, mining or other such activity. Non-vegetative refuse is not included in this meaning.

2.12. "Opacity" means the degree to which smoke ~~and/or~~ or particulate matter emissions reduce the transmission of light and obscure the view of an object in the background.

2.13. "Open Burning" means the combustion of refuse whereby the gaseous products of combustion are not conveyed through man-made means from one point to another and are discharged directly to the open air. This term includes 'burn barrels', but does not include air

curtain incinerators.

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

2.15. "Pathological Waste Incinerator" means ~~an incinerator used to dispose of animal and/or human tissue, bandages, medical wastes and medical laboratory wastes~~ waste material consisting of only human or animal remains, anatomical parts or tissue, the bags or containers used to collect and transport the waste material, and animal bedding (if applicable).

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

2.17. "Prescribed burning" means the controlled application of fire to vegetation under specified environmental conditions and precautionary measures, which allows the fire to be confined to a predetermined area for the purpose of accomplishing specifically planned wildlife and forest management objectives.

~~2.17.~~ 2.18. "Refuse" means the useless ~~and/or~~, unwanted or discarded solid, liquid ~~and/or~~ or gaseous waste materials resulting from community, commercial, industrial or citizen activities.

2.19. "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.

~~2.18.~~ 2.20. "Sewage Sludge Incinerator" means an incinerator which is used to incinerate the sludge produced by municipal or industrial sewage treatment plants.

~~2.19.~~ 2.21. "Smoke" means small gasborne and airborne particles emitted as the result of the combustion of refuse in sufficient numbers to be visible.

~~2.20. "Wood Waste" means untreated wood and untreated wood products, including tree stumps (whole or chipped), trees, tree limbs (whole or chipped), bark, sawdust, chips, scraps, slabs, millings and shavings. Wood waste does not include:~~

~~2.20.a. Yard waste;~~

~~2.20.b. Construction, renovation, or demolition wastes; or~~

~~2.20.c. Clean lumber.~~

~~2.21. "Yard Waste" means grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs from residential, commercial, retail, institutional, or industrial sources as part of maintaining yards or other private or public lands.~~

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

§45-6-3. Open Burning Prohibited.

3.1. General Provisions. -- The open burning of refuse by any person, ~~firm, corporation, association or public agency~~ is prohibited except for the following ~~exemptions~~ exceptions:

3.1.a. Vegetation grown on the premises of a home or farm, provided that there is compliance with the provisions of subdivision 1.1.b, and the health, safety, comfort and property of persons are protected from the effects of such burning.

3.1.b. Fires set for the purpose of bona fide instruction and training of public and industrial employees and members of volunteer fire departments in the methods of fighting fires, provided that approval to conduct such burning is

received from the ~~Director or the Director's duly authorized representative~~ Secretary. Burning of structures for fire training is subject to specific requirements of 45CSR15, in particular, 45CSR34 and 40 CFR Part 61 Subpart M.

3.1.c. Open burning of land clearing debris provided that all the following conditions are met:

3.1.c.1. There is no practical alternate method for the disposal of the material to be burned;

3.1.c.2. The health, safety, comfort and property of persons are protected from the effects of such burning; and

3.1.c.3. Approval to conduct such burning is received from the ~~Director or the Director's duly authorized representative~~ Secretary.

3.1.d. Open burning of propellant and explosive wastes, provided that the open burning is conducted in accordance with 45CSR25.

3.1.e. Prescribed burning, in accordance with a written prescribed fire plan approved by the West Virginia Division of Forestry, or in the case of federal lands, approved by the appropriate Agency Administrator and endorsed by the West Virginia Division of Forestry, prior to ignition for the following wildlife, forest and associated land management purposes:

3.1.e.1. To improve forest health;

3.1.e.2. To maintain and restore wildlife habitat;

3.1.e.3. To reduce forest fuels and minimize the effect of wildfires;

3.1.e.4. To prepare land for planting or seeding (site preparation);

3.1.e.5. To restore fire-dependent forest ecosystems; and

3.1.e.6. To integrate with other control methods for use in eradication of non-native invasive plants.

3.2. The exemptions listed in subsection 3.1 are subject to the following stipulation:

3.2.a. Upon notification by the ~~Director~~ Secretary, no person shall cause, ~~suffer, or allow~~ or permit any form of open burning during existing or predicted periods of atmospheric stagnation. Notification shall be made by such means as the ~~Director~~ Secretary may deem necessary and feasible.

§45-6-4. Emission Standards for Incinerators and Incineration.

4.1. No person shall cause, ~~suffer, or allow~~ or permit particulate matter to be discharged from any incinerator into the open air in excess of the quantity determined by use of the following formula:

$$\text{Emissions (lb/hr)} = F \times \text{Incinerator Capacity (tons/hr)}$$

Where, the factor, F, is as indicated in Table I below:

Table I: Factor, F, for Determining Maximum Allowable Particulate Emissions.

| Incinerator Capacity | Factor F |
|-----------------------------|----------|
| A. Less than 15,000 lbs/hr | 5.43 |
| B. 15,000 lbs/hr or greater | 2.72 |

4.2. ~~After September 1, 1969, in~~ In the Counties of Brooke, Hancock, Ohio, Marshall and Kanawha; and the Magisterial Districts of Valley (Fayette County), Scott and Pocatalico (Putnam County), Tygart (Wood County), the City of Fairmont and those portions of Union and Winfield Magisterial Districts west of I-79 (Marion County), no person shall cause, ~~suffer, or allow~~ or permit the operation of any incinerator during the period starting one (1) hour before

sunset and extending until two (2) hours after sunrise. This subsection shall not apply to the operation of flares, pathological waste, industrial, ~~municipal~~ or sewage sludge incinerators.

4.3. Emission of Visible Particulate Matter. -- No person shall cause, ~~suffer, or~~ allow or permit emission of smoke into the atmosphere from any incinerator which is twenty (20%) percent (20%) opacity or greater.

4.4. The provisions of subsection 4.3 shall not apply to smoke which is less than forty (40%) percent (40%) opacity, for a period or periods aggregating no more than eight (8) minutes per start-up, or six (6) minutes in any sixty (60)-minute period for stoking operations.

4.5. No person shall cause, ~~suffer, or~~ allow or permit the emission of particles of unburned or partially burned refuse or ash from any incinerator which are large enough to be individually distinguished in the open air.

4.6. Incinerators, including all associated equipment and grounds, shall be designed, operated and maintained so as to prevent the emission of objectionable odors.

4.7. Incineration of ~~Residues and Hazardous Materials~~ Pathological Waste. -- Persons responsible for the incineration of ~~hazardous materials such as insecticides, empty insecticide containers, toxic materials, certain chemical residues, explosives, used bandages and other medical wastes; pathological wastes, human and animal remains and other like materials~~ waste shall give the utmost care and consideration to the ~~potential harmful~~ effects of the emissions resulting from such activities. Evaluation of these facilities as to adequacy, efficiency and emission potential will be made on an individual basis by the ~~Director~~ Secretary, working in conjunction with other appropriate governmental agencies.

4.8. ~~Air Curtain Incinerators~~ -- ~~Notwithstanding any other provisions in this rule, the construction, modification, siting, and~~

~~operation of air curtain incinerators shall be subject only to sections 9, 10, 11 and the following requirements:~~

~~4.8.a. Incinerators as defined and regulated in 40 CFR Part 60, Subparts Eb, CCCC (65 FR 75338, December 1, 2000) and AAAA (65 FR 76350, December 6, 2000) shall comply with applicable requirements set forth in those regulations. The requirements of 40 CFR Part 60 Subparts CCCC and AAAA as related to air curtain incinerators are hereby incorporated by reference. All notices, reports and other information required to be submitted to the Administrator of the United States Environmental Protection Agency pursuant to 40 CFR Part 60, Subparts Eb, CCCC and AAAA shall also be submitted to the Director.~~

~~4.8.b. Only land clearing debris, wood waste, clean lumber or yard waste as defined in this rule or 40 CFR Part 60, Subparts Eb, CCCC and AAAA may be burned by an air curtain incinerator.~~

~~4.8.c. Except as provided in subdivision 4.8.e, construction or modification of an air curtain incinerator shall be subject to the permitting requirements of 45CSR13, 45CSR14, or 45CSR19, as applicable.~~

~~4.8.d. Except for incinerators subject to subdivision 4.8.e, air curtain incinerators not subject to subdivision 4.8.a shall comply with emission control, reporting, and recordkeeping requirements identical to those set forth under 40 CFR §60.2250, 40 CFR §60.2255, and 40 CFR §60.2260. Reports, notices, and other information required to be submitted to the Administrator of the United States Environmental Protection Agency under those cited sections must only be submitted to the Director.~~

~~4.8.e. Temporary Air Curtain Incinerators. -- Air curtain incinerators not subject to subdivision 4.8.a that are temporarily sited and operated only for the disposal of on-site land clearing debris are not shall not be subject to~~

the emission standards of this rule or to the preconstruction permitting requirements of 45CSR13, provided that the following conditions are met:

~~4.8.c.1:~~ 4.8.a. There is no practical alternative method for the disposal of the material to be ~~burned~~ incinerated;

~~4.8.c.2:~~ 4.8.b. The health, safety, comfort and property of persons are protected from the effects of such ~~burning~~ incineration;

~~4.8.c.3:~~ 4.8.c. Approval to conduct such ~~burning~~ incineration is received from the ~~director~~ or the director's duly authorized representative Secretary; and

~~4.8.c.4:~~ 4.8.d. The temporary air curtain incinerator is not subject to the requirements of section 9 of this rule, 45CSR14, 45CSR18, or 45CSR19, or 45CSR30.

~~4.8.f.~~ Air curtain incinerators subject to the requirements of 45CSR30 shall apply for and obtain an operating permit in accordance with the provisions of 45CSR30.

4.9. Except for flares and temporary air curtain incinerators under subsection 4.8, the owner or operator of an incinerator shall post operating instructions for the incinerator clearly visible by the operator from the incinerator charging area. Such posting shall provide instruction for proper operation in order to prevent a violation of this rule.

4.10. The owner and operator of an incinerator shall design, construct and operate the facility in accordance with all applicable rules promulgated by the Secretary including, but not limited to, this rule, 45CSR13, 45CSR14, 45CSR18, 45CSR19, 45CSR25, 45CSR30 and 45CSR34, as applicable.

§45-6-5. Registration.

5.1. Within thirty (30) days after the

effective date of this rule, all persons owning and/or operating ~~incinerators within the state~~ an incinerator in West Virginia shall have registered with the ~~Director~~ Secretary on forms made available by the ~~Director~~ Secretary, the name of the person, company or corporation operating the plant, the address, location, county, ownership (lessee, lessor), the principal officer of the company and any such other reasonable information as the ~~Director~~ Secretary may require including, but not limited to, make, model, capacity, operating temperature, fuel used, stack parameters and description of air pollution control equipment.

§45-6-6. Permits.

6.1. ~~No~~ Except for temporary air curtain incinerators under subsection 4.8, no person shall construct, modify or relocate any incinerator without first obtaining a permit in accordance with the provisions of W.Va. Code §§22-5-1 et seq., 45CSR13, 45CSR14, ~~and~~ 45CSR19, ~~and~~ 45CSR30, as applicable, provided that, and notwithstanding the provisions of 45CSR13, flares and flare stacks meeting the following requirements shall not be required to obtain a preconstruction permit under 45CSR13:

6.1.a. Temporary flares used in conjunction with maintenance and repair of natural gas pipelines, combusting only the gas contained therein, which meet the following conditions:

6.1.a.1. The flare or flare stack exists on-site for a cumulative period of less than thirty (30) days in any twelve (12) consecutive month period;

6.1.a.2. The maximum emissions from the flare or flare stack, based on the potential to emit for the period of time that the flare or flare stack is in use, do not exceed the threshold amounts specified in the definitions of "stationary source" and "modification" in 45CSR13;

6.1.a.3. The flare or flare stack is not subject to the requirements of ~~40 CFR Parts 60;~~

~~61, or 63, or 45CSR14 or 45CSR19~~ 45CSR14, 45CSR16, 45CSR19, 45CSR25, 45CSR30 or 45CSR34; and

6.1.a.4. The source maintains records of emissions, monitoring results or other records sufficient to determine compliance with the requirements of paragraphs 6.1.a.1 through 6.1.a.3 for a minimum period of three (3) years and makes such records available upon the ~~Director's~~ Secretary's request.

6.1.b. Temporary flares, other than those identified in subdivision 6.1.a, which meet the following conditions:

6.1.b.1. The flare or flare stack exists on-site for a cumulative period of less than ten (10) days in any twelve (12) consecutive month period;

6.1.b.2. The maximum emissions from the flare or flare stack, based on the potential to emit for the period of time that the flare or flare stack is in use, do not exceed the threshold amounts specified in the definitions of "stationary source" and "modification" in 45CSR13;

6.1.b.3. The flare or flare stack is not subject to the requirements of ~~40 CFR Parts 60, 61, or 63, or 45CSR14 or 45CSR19~~ 45CSR14, 45CSR16, 45CSR19, 45CSR25, 45CSR30 or 45CSR34;

6.1.b.4. The flare or flare stack meets all of the general control device requirements of 40 CFR §60.18, including, but not limited to, the requirement to monitor the flare to ensure it is operated and maintained in conformance with its design and the opacity standard in 40 CFR §60.18(c)(1);

6.1.b.5. The flare or flare stack is designed and operated in a manner to prevent violations of any national ambient air quality ~~standards~~ standard;

6.1.b.6. The source notifies the

~~Director~~ Secretary within ten (10) working days of locating any flare or flare stack on-site, which notification shall include the location and anticipated duration that such flare will remain on-site; and

6.1.b.7. The source maintains records of emissions, monitoring results or other records sufficient to determine compliance with the requirements of paragraphs 6.1.b.1 through 6.1.b.6 for a minimum period of three (3) years and makes such records available upon the ~~Director's~~ Secretary's request.

6.2. Nothing contained in this rule shall be construed or inferred to mean that permit requirements in accordance with applicable rules shall be in any way limited or inapplicable, including but not limited to the permitting requirements under 45CSR13, 45CSR14, 45CSR19, 45CSR25 and 45CSR30.

§45-6-7. Reports and Testing.

7.1. At such reasonable times as the ~~Director~~ Secretary may designate, the operator of any incinerator shall be required to conduct or have conducted stack tests to determine the particulate matter loading, by using 40 CFR Part 60, Appendix A, Method 5 or other equivalent U.S. EPA approved method approved by the ~~Director~~ Secretary, in exhaust gases. Such tests shall be conducted in such manner as the ~~Director~~ Secretary may specify and be filed on forms and in a manner acceptable to the ~~Director~~ Secretary. ~~The Director, or the Director's authorized representative, Secretary may,~~ at the ~~Director's~~ Secretary's option, witness or conduct such stack tests. Should the ~~Director~~ Secretary exercise his or her option to conduct such tests, the operator will provide all the necessary sampling connections and sampling ports to be located in such manner as the ~~Director~~ Secretary may require, power for test equipment and the required safety equipment such as scaffolding, railings and ladders to comply with generally accepted good safety practices.

7.2. ~~The Director, or the Director's duly~~

~~authorized representative~~, Secretary may conduct such other tests as the ~~Director~~ Secretary may deem necessary to evaluate air pollution emissions other than those noted above.

§45-6-8. Variances.

8.1. If it can be demonstrated to the ~~Director~~ Secretary that the disposal of certain materials by any method other than burning leads to ground water contamination, then the person responsible for the disposal of such materials shall submit to the ~~Director~~ Secretary within sixty (60) days of such demonstration a program and preconstruction permit application under 45CSR13 leading to the construction of a suitable incinerator. If such program and permit is accepted approved by the ~~Director~~ Secretary, the person shall not be in violation as long as such incineration is in accordance with the approved program is observed and permit issued by the Secretary.

8.2. Due to an unavoidable malfunction of equipment, emissions exceeding ~~those provided for any limitation~~ in this rule may be permitted by the ~~Director~~ Secretary for periods not to exceed five (5) days upon specific application to the ~~Director~~ Secretary. Such application shall be made within twenty-four (24) hours of the malfunction. In cases of major equipment failure, additional time periods may be granted by the ~~Director~~ Secretary provided a corrective program has been submitted by the owner or operator and approved by the ~~Director~~ Secretary.

§45-6-9. Emergencies and Natural Disasters.

9.1. In situations involving flood, tornado, ice storm, high winds or other natural disaster the ~~Director~~ Secretary may, based on demonstrated need, ~~allow~~ approve temporary open burning or ~~incineration~~ of vegetation, non-hazardous building debris and other non-hazardous debris from such natural disaster which would otherwise be subject to the requirements of sections 3, ~~4~~ or 6 ~~of this rule~~, provided that:

9.1.a. There is no practical alternative

method for disposal of the material to be burned; ~~and~~

9.1.b. The health, safety, comfort and property of persons are protected from such burning; ~~and~~

9.1.c. Approval to conduct such burning is received from the Secretary.

9.2. During a declared state of emergency under Annex W of the West Virginia Emergency Operations Plan involving a highly contagious animal or poultry disease, the Secretary may approve temporary incineration or open burning of animal or poultry remains and related pathological waste which would otherwise be subject to the requirements of sections 3, 4 or 6 or 45CSR18, provided that:

9.2.a. There is no practical alternative method for carcass and pathological waste disposal;

9.2.b. The health, safety, comfort and property of persons are protected from such incineration or burning; and

9.2.c. Approval to conduct such incineration or burning is received from the Secretary.

§45-6-10. Exemptions.

10.1. The following combustion units are subject to the requirements of 45CSR18 and shall be exempt from the requirements of this rule:

10.1.a. Large municipal waste combustors, small municipal waste combustion units, hospital/ medical/ infectious waste incinerators, commercial and industrial solid waste incineration units, and other solid waste incineration units;

10.1.b. Air curtain incinerators which are a distinct operating unit of any commercial or industrial facility;

10.1.c. Any air curtain incinerator that burns less than 35 tons per day of municipal solid waste, or is located at an institutional facility burning any amount of institutional waste generated at that facility; and rule.

10.1.d. Incinerators or air curtain incinerators used on a temporary basis to combust vegetation or debris from disaster recovery or a state of emergency.

10.2. Any pathological waste incinerator subject to 45CSR18 or 45CSR25 shall be exempt from the requirements of this rule.

10.3. Any facility which incinerates low-level radioactive waste or chemotherapeutic waste shall be exempt from the requirements of this rule.

10.4. Any hazardous waste combustor subject to 40 CFR Part 63, Subpart EEE and 45CSR34 shall be exempt from the requirements of this rule.

10.5. Any hazardous waste incinerator subject to 40 CFR Parts 264 or 265 and 45CSR25 shall be exempt from the requirements of this rule.

~~§45-6-10:~~ §45-6-11. Effect of the Rule.

~~10.1:~~ 11.1. Nothing in this rule shall be construed to allow or permit the installation, establishment or construction of a new municipal or commercial solid waste facility utilizing incineration technology for the purpose of solid waste incineration in violation of W.Va. Code §22-15-19.

~~§45-6-11:~~ §45-6-12. Inconsistency Between Rules.

~~11.1:~~ 12.1. In the event of any inconsistency between this rule and any other ~~existing~~ rule of the West Virginia ~~Division~~ Department of Environmental Protection, ~~such the~~ inconsistency shall be resolved by the determination of the ~~Director~~ Secretary and ~~such the~~ determination shall be based upon the application of the more stringent provision, term, condition, method or

NOTICE OF PUBLIC HEARING AND PUBLIC COMMENT PERIOD

On Monday, July 9, 2007 beginning at 6 p.m., the West Virginia Department of Environmental Protection, Division of Air Quality (DAQ) will hold a public hearing on proposed revisions to existing legislative rules. Oral and written comments shall be limited only to the proposed revisions to the following existing legislative rules:

- 45CSR6 To Prevent and Control Air Pollution From Combustion of Refuse;
- 45CSR8 Ambient Air Quality Standards for Sulfur Oxides and Particulate Matter;
- 45CSR16 Standards of Performance for New Stationary Sources Pursuant to 40 CFR Part 60;
- 45CSR18 To Prevent and Control Emissions From Commercial and Industrial Solid Waste Incineration Units;
- 45CSR25 To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities;
- 45CSR34 Emission Standards for Hazardous Air Pollutants for Source Categories Pursuant to 40 CFR Part 63;
- 45CSR39 Control of Annual Nitrogen Oxide Emissions to Mitigate Interstate Transport of Fine Particulate Matter and Nitrogen Oxides;
- 45CSR40 Control of Ozone Season Nitrogen Oxide Emissions to Mitigate Interstate Transport of Ozone and Nitrogen Oxides; and
- 45CSR41 Control of Annual Sulfur Dioxide Emissions to Mitigate Interstate Transport of Fine Particulate Matter and Sulfur Dioxide.

On Monday, July 9, 2007, after public hearings on the above proposed legislative rules, the West Virginia Department of Environmental Protection, DAQ will hold a public hearing on the following proposed legislative rule:

- 45CSR42 Greenhouse Gas Emissions Inventory Program.

Upon authorization and promulgation of revisions to 45CSR6, 45CSR8, 45CSR39, 45CSR40 and 45CSR41, the DAQ will submit the final rules to the U.S. Environmental Protection Agency (U.S. EPA) as revisions to the State Implementation Plan, pursuant to the federal Clean Air Act.

Upon authorization and promulgation of revisions to 45CSR16, the DAQ will submit the final rule to the U.S. EPA for approval as a part of West Virginia's program delegation of the federal New Source Performance Standards.

Upon authorization and promulgation of revisions to 45CSR18, the DAQ will submit the final rule to the U.S. EPA for approval as a part of West Virginia's Section 111(d)/129 Plan and program delegation of the federal New Source Performance Standards.

Upon authorization and promulgation of revisions to 45CSR25, the DAQ will submit the final rule to the U.S. EPA for approval as part of the West Virginia Hazardous Waste Management Program.

Upon authorization and promulgation of revisions to 45CSR34, the DAQ will submit the final rule to the U.S. EPA for approval as a part of West Virginia's program delegation of the National Emission Standards for Hazardous Air Pollutants.

Upon authorization and promulgation of 45CSR42, the DAQ will begin implementation of a Greenhouse Gas Inventory Program.

The public hearing will be held at the Department of Environmental Protection, Dolly Sods Conference Room, 601 57th Street SE, Charleston and is open to the public. Written and oral comments will be accepted until the close of the hearing and will be made a part of the rulemaking record. Comments will also be accepted by fax (304-926-0479), U.S. Mail, or e-mail if postmarked or delivered by the close of business on July 9, 2007.

Copies of the proposed legislative rules may be viewed between 8:30 a.m. and 4:30 p.m. at the Division of Air Quality, 601 57th SE, Charleston, WV 25304 beginning June 8, 2007 or electronically upon e-mail request to: tmowrer@wvdep.org. For a copy of the proposed rules, access the following web address: www.wvdep.org/daq. Choose Public Notice and Comment.

Send written comments to John A. Benedict, Director, Division of Air Quality at the above address. Please identify the draft document to which the comments apply, the commenter's name, address, and telephone number. Comments will also be accepted by e-mail if transmitted by 5:00 p.m. on July 9, 2007 to: tmowrer@wvdep.org. Comments submitted by U.S. Mail must be postmarked by July 9, 2007.



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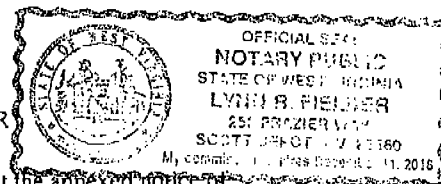
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was duly published in said paper(s) during the dates listed below, and was posted at the front door of the court house of said Kanawha County
West Virginia, on the 9TH day of JUNE 2007 Published during the following dates: 06/08/07-06/08/07
Subscribed and sworn to before me this 12 day of June
Printers fee \$ 396.90

Notary Public

Division of Mining and Reclamation

33CSR2 - Surface Mining Reclamation Rule - The public hearing will be held at 5 p.m. on July 10, 2007, in the Candan Valley Room. The comment period will end at the conclusion of the hearing.

47CSR5A - Individual State Certification of Activities Requiring a Federal Permit - The public hearing will be held at 6 p.m. on July 10, 2007, in the Candan Valley Room. The comment period will end at the conclusion of the hearing.

47CSR30 - W/INPDES Rules for Coal Mining Facilities - The public hearing will be held at 6 p.m. on July 10, 2007, in the Candan Valley Room. The comment period will end at the conclusion of the hearing.

179CSR1 - Surface Mining - Blasting Rule - The public hearing will be held at 5 p.m. on July 10, 2007, in the Candan Valley Room. The comment period will end at the conclusion of the hearing.

For more information on any of the DWM rules, call 926-0440.

Office of Oil and Gas
33CSR3 - Coalbed Methane Wells Rule - The public hearing will be held at 6 p.m. on July 17, 2007, in the Coopers Rock Training Room. The comment period will end at the conclusion of the hearing. For more information, call 926-0450.

Division of Land Reclamation

33CSR10 - Recycling Assistance Grant Program - The public hearing will be held at 6 p.m. on July 12, 2007, in the Coopers Rock Training Room. The comment period will end at the conclusion of the hearing.

40CSR3 - Voluntary Remediation and Redevelopment Rule - The public hearing will be held at 6:30 p.m. on July 12, 2007, in the Coopers Rock Training Room. The comment period will end at the conclusion of the hearing.

For more information on any of the DLR rules, call 926-0453.

Public Information Office

40CSR6 - Environmental Excellence Rule - The public hearing will be held at 7 p.m. on July 17, 2007, in the Coopers Rock Training Room. The comment period will end at the conclusion of the hearing. For more information, call 926-0440.

(287864)

Division of Water and Waste Management

33CSR1 - Standards for Beneficial Use of Filtrate from Water Treatment Plants - The public hearing will be held at 6 p.m. on July 2, 2007, in the Coopers Rock Training Room. The comment period will end at the conclusion of the hearing.

33CSR20 - Hazardous Waste Management System - The public hearing will be held at 6 p.m. on July 17, 2007, in the Coopers Rock Training Room. The comment period will end at the conclusion of the hearing.

33CSR20 - Underground Storage Tanks - The public hearing will be held at 6:30 p.m. on July 17, 2007, in the Coopers Rock Training Room at DEP's Charleston headquarters. The comment period will end at the conclusion of the hearing.

47CSR2 - Rules Governing Water Quality Standards - The public hearing will be held at 6 p.m. on July 16, 2007, in the Coopers Rock Training Room. The comment period will end at 5 p.m. on July 17, 2007. The rule includes a proposed use redesignation for Part 3 Branch in the Guyanote River Basin (see additional information in the information sheet attached to the briefing document).

47CSR10 - National Pollutant Discharge Elimination System (NPDES) - The public hearing will be held at 6:30 p.m. on July 17, 2007, in the Coopers Rock Training Room. The comment period will end at the conclusion of the hearing.

47CSR34 - Dam Safety - The public hearing will be held at 7 p.m. on July 11, 2007, in the Coopers Rock Training Room. The comment period will end at the conclusion of the hearing.

40CSR5 - Antidegradation Implementation Procedures - The public hearing will be held at 7 p.m. on July 16, 2007, in the Coopers Rock Training Room. The comment period will end at 5:00 p.m. on July 17, 2007.

For more information on any of the DWM rules, call 926-0455.

PUBLIC NOTICE

The West Virginia Department of Environmental Protection has scheduled public hearings for its 2008 proposed legislative rules. All hearings will be held at DEP's Charleston headquarters, 601 57th Street S.E., Charleston, WV 26304. Oral and written comments shall be limited to the proposed revisions to the following rules. All comments will be made a part of the rulemaking record.

Copies of the rules and other rule documents are available from the Secretary of State's office or from the agency at wvdep.org/2008rules. You may also obtain hardcopies of the information by calling the phone numbers listed below.

Written comments may be submitted to the Public Information Office at the above address. Comments may also be e-mailed to comments@wvdep.org. The hearing dates, locations and comment deadlines are as follows:

Division of Air Quality

45CSR6 - Control of Air Pollution from Combustion of Refuse

45CSR6 - Ambient Air Quality Standards

45CSR16 - Standards of Performance for New Stationary Sources

45CSR18 - Control of Air Pollution from Combustion of Solid Waste

45CSR25 - Control of Air Pollution from Hazardous Waste Treatment, Storage and Disposal Facilities

45CSR34 - Emission Standards for Hazardous Air Pollutants

45CSR39 - Control of Annual Nitrogen Oxides Emissions

45CSR40 - Control of Ozone Season Nitrogen Oxides Emissions

45CSR41 - Control of Annual Sulfur Dioxide Emissions

45CSR52 - Greenhouse Gas Emissions Inventory Program

The public hearing for all air quality rules will be held at 6 p.m. on July 9, 2007, in the Dolly Sods conference room. The comment period will end at the conclusion of the hearing. Upon authorization and promulgation of revisions to 45CSR6, 45CSR16, 45CSR39, 45CSR40, and 45CSR41, the DAQ will submit the rules to the U.S. Environmental Protection Agency (EPA) as revisions to the State Implementation Plan pursuant to the federal Clean Air Act (CAA). Rules 45CSR18, 45CSR25, and 45CSR34 will also be submitted to EPA to fulfill other federal obligations under the CAA, including delegations, plans and program approvals. For more information on any of the air rules, call 926-0475.

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

In the matter of: PROPOSED REVISIONS TO 45CSR6 -
Prevent and Control Air Pollution from
Combustion of Refuse.

Transcript of proceedings had at a public
hearing in the above-styled matter taken by Missy L. Young,
Certified Court Reporter, at the West Virginia Department
of Environmental Protection, Division of Air Quality, Dolly
Sods Conference Room, 601 57th Street, S.E. Charleston,
West Virginia, commencing at 6:00 p.m., on the 9th day of
July 2007, pursuant to notice.

MISSY L. YOUNG, C.C.R.
POST OFFICE BOX 13221
SISSONVILLE, WEST VIRGINIA 25360
(304) 984-2300

P R O C E E D I N G S

MS. CHANDLER: This public hearing will now come to order on the 9th day of July, 2007, at the West Virginia Department of Environmental Protection's Dolly Sods Conference Room, 601 57th Street South East, Charleston, West Virginia. This public hearing is being held to accept comments on proposed revisions to existing legislative rule 45CSR6 - Control of Air Pollution from Combustion of Refuse; 45CSR8 - Ambient Air Quality Standards; 45CSR16 - Standards of Performance for New Stationary Sources; 45CSR18 - Control of Air Pollution From Combustion of Solid Waste; 45CSR25 - Control of Air Pollution from Hazardous Waste Treatment, Storage, and Disposal Facilities; 45CSR34 - Emission Standards for Hazardous Air Pollutants; 45CSR39 - Control of Annual Nitrogen Oxide Emissions; 40CSR40 - Control of Ozone Season Nitrogen Oxide Emissions; 45CSR41 - Control of Annual Sulfur Dioxide Emissions; and 45CSR42 - Greenhouse Gas Emissions Inventory Program.

A notice for the hearing was filed in the Secretary of State's office on June 6th, and noticed in the State Register on June 8th, 2007. A Class I legal advertisement was published in the Charleston Gazette and

1 Charleston Daily Mail on June 8th, 2007. The notice was,
2 also, posted on the Department of Environmental
3 Protection's web site.

4 This public hearing is being held pursuant
5 to the provisions of 29A of the West Virginia Code.

6 My name is Jeanne Chandler with the
7 Division of Air Quality, Department of Environmental
8 Protection. I will be the moderator for the proceedings
9 this evening.

10 Comments and testimony will be accepted
11 until the close of this hearing and will be made part of
12 the rulemaking record. Any questions should be included in
13 your comments and will be answered as part of the response
14 to comments.

15 The court reporter is Missy Young. If
16 anyone desires a transcript of this proceeding, please
17 contact Ms. Young at 984-2300.

18 The purpose of this public hearing is to
19 accept comments on the proposed revisions to 45CSR6 -
20 Control of Air Pollution from Combustion of Refuse.

21 This rule establishes emission standards
22 for particulate matter and requirements for activities
23 involving incineration of refuse, which are not subject to,

1 or are exempted from regulation under various federal
2 counterpart regulations for specific combustion source
3 categories.

4 This rule, also, prohibits, with limited
5 exception, open burning and sets forth the registration,
6 permitting, reporting, testing, emergency, natural
7 disaster, and exemption provisions for activities involving
8 the combustion of refuse and land clearing debris.

9 This rule does not prohibit bonfires,
10 campfires, or other forms of open burning for the purpose
11 of personal enjoyment and comfort.

12 45CSR6 is part of the West Virginia State
13 Implementation Plan approved by the United States
14 Environmental Protection Agency to assure attainment and
15 maintenance of attainment with the National Ambient Air
16 Quality Standards for particulate matter.

17 The Division of Air Quality intends to
18 streamline West Virginia's waste combustion regulatory
19 structure by revising legislative rules 45CSR6 and 45CSR18
20 to follow federal combustion source regulatory structure.
21 It is the intent of the Secretary that 45CSR6, the SIP
22 rule, cover activities involving incineration of refuse
23 which is not subject to, or are exempt from regulation

1 under various federal counterpart regulations for specific
 2 combustion source categories. It is also the intent of the
 3 Secretary that 45CSR18, the Federal delegation rule, cover
 4 combustion sources identified in Section 129 of the Clean
 5 Air Act, with incorporation by reference of federal
 6 counterpart language promulgated under 40 CFR Part 60.
 7 Section 129 sources subject to 45CSR18, and exempt from
 8 45CSR6, include large municipal waste combustors, small
 9 municipal waste combustion units, hospital, medical
 10 infectious waste incinerators, commercial and industrial
 11 solid waste incineration units, and other solid waste
 12 incineration units.

13 Therefore, the proposed revisions leave
 14 45CSR6 as a basic open burning/incinerator rule. Federal
 15 counterpart language for large municipal waste combustors,
 16 small municipal waste combustion units, and commercial and
 17 industrial solid waste incineration units has been
 18 relocated to 45CSR18. 45CSR6 has new provisions for open
 19 burning or incineration of animal or poultry carcasses
 20 during a declared state of emergency involving highly
 21 contagious animal or poultry disease. The rule also has
 22 revised language, and new definitions, for pathological
 23 waste incinerators burning at least 90 percent pathological

1 waste, which are exempted from referenced federal
2 counterpart language in 45CSR18. Other revisions to the
3 rule include a revised title, prohibition of statutory air
4 pollution, addition of new language for posted incinerator
5 operating instructions, a new exemption section, and
6 general language clarification and correction.

7 Upon authorization and promulgation of
8 revision to 45CSR6, the DAQ will submit the final rules to
9 the U.S. Environmental protection Agency as revisions to
10 the State Implementation Plan pursuant to the federal Clean
11 Air Act.

12 The floor is now open for comments. Please
13 state your name and any affiliation.

14 There being nothing further, this public
15 hearing for the proposed revisions for 45CSR6 is concluded.

16 (WHEREUPON, the hearing was
17 concluded at 6:09 p.m.)

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19

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21

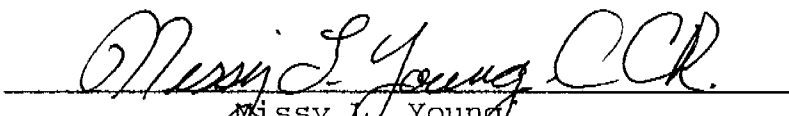
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23

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

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

Given under my hand and official seal this
20th day of July 2007.


Missy L. Young
Certified Court Reporter
Commissioner for the State of West Virginia

My commission expires April 15, 2008.



DIVISION OF NATURAL RESOURCES

Wildlife Resources Section
Capitol Complex, Building 3, Room 812
1900 Kanawha Boulevard, East
Charleston WV 25305-0664
Telephone (304) 558-2771
Fax (304) 558-3147
TDD (304) 1-800-354-6087

Joe Manchin III
Governor

Frank Jezioro
Director

July 6, 2007

Mr. John A. Benedict, Director
Division of Air Quality
West Virginia Department of Environmental Protection
601 57th Street
Charleston, West Virginia 25304

Dear Mr. Benedict:

The West Virginia Division of Natural Resources, Wildlife Resources Section has reviewed proposed revisions to the state's existing Air Quality Rules. In particular, we are most concerned with Legislative Rule 45CSR6 (To Prevent and Control Air Pollution from Combustion of Refuse). This rule establishes the Open Burning Regulations for the State of West Virginia, and we are pleased to offer the following comments and recommendations.

Our agency is concerned that the existing language for Open Burning in 45CSR6-3 does not include an exemption specific to prescribed burning for land and/or wildlife management purposes. We request the final rule be revised to include specific exemptions that cover a range of prescribed burning activities on public lands (i.e., 45CSR6 – 3.1a through 3.1c). Specifically, we recommend the following language be included in 45CSR6 for State and Federal lands within West Virginia.

Open burning (e.g., prescribed or controlled burning) may be used for the following wildlife, forest and associated land management activities:

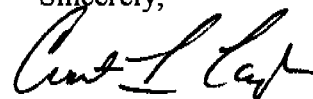
- 1) To improve forest health;
- 2) To maintain and restore wildlife habitat;
- 3) To reduce forest fuels and minimize the effect of wild fires;
- 4) To prepare land for planting or seeding (site preparation);
- 5) To restore fire dependent forest ecosystems;
- 6) To integrate with other control methods for use in eradication of nonnative invasive plants.

The West Virginia Division of Natural Resources, Wildlife Resources Section utilizes prescribed fire as a tool to manage wildlife habitat; therefore, we request the Open Burning rule

Mr. John A. Benedict
July 6, 2007
Page 2 of 2

(45CSR6-3) be modified to include a specific exemption that covers a range of prescribe burning activities. Thank you for this opportunity to comment on proposed revisions to Legislative Rule 45CSR6. Should you have any questions concerning our comments or need more information, please contact me at anytime.

Sincerely,

A handwritten signature in black ink, appearing to read "Curtis I. Taylor". The signature is fluid and cursive, with the first name "Curtis" and last name "Taylor" clearly distinguishable.

Curtis I. Taylor, Chief
Wildlife Resources Section

CIT/prj



United States
Department of
Agriculture

Forest
Service

Monongahela National Forest

200 Sycamore Street
Elkins, WV 26241
304-636-1800

File Code: 2580

Date: July 3, 2007

John A. Benedict
Director, Division of Air Quality
WV Department of Environmental Protection
601 57th Street
Charleston, WV 25304

07-06-07 10:17 AM

Dear Mr. Benedict:

The West Virginia Department of Environmental Protection, Division of Air Quality is currently accepting public comments on proposed revisions to several existing rules. This includes 45CSR6; To Prevent and Control Air Pollution From Combustion of Refuse, which establishes the Open Burning Regulations for the State of West Virginia. This letter constitutes my comments on the proposed revisions to this regulation.

Prescribed fire use on national forest lands is necessary as a management tool for many purposes, including ecological restoration, silvicultural and wildlife management techniques and hazardous fuel reduction purposes. The Environmental Protection Agency has also recognized in its Interim Air Quality Policy on Wildland and Prescribed Fires (Interim Policy EPA, 1998), that fire has played an important natural role in many ecosystems. Through historic management activities, fire has been suppressed in many of these ecosystems and the natural fire cycle has been altered. It has been increasingly understood that prescribed fire can be an important tool for restoring some of these areas to mimic the natural fire cycle. For these reasons, the Monongahela National Forest is interested in implementing a prescribed fire program. I am concerned that the existing language for Open Burning in WV Code (45CSR6-3) does not include an exemption specific to prescribed burning for land management purposes. I am requesting that your agency revise the final rule to include a specific exemption that covers the range of prescribed burning activities on the forest (45CSR6-3.1.a through 3.1.c).

For ease of addressing my request, I felt it would be helpful to provide examples of prescribed burning exemption language that has been successfully implemented by the air quality regulatory agencies of neighboring states. Kentucky and Virginia both contain federally managed forest lands that have active prescribed burning programs, and have included exemptions specific to these activities in their open burning regulations. The Kentucky Division for Air Quality has included the following language in their Open Burning Regulations, 401 KAR 63:005 Section 4, (7):

Section 4. Allowable Open Burning. Subject to the limitations contained in this section and the restrictions contained in Section 5 of this administrative regulation, open burning shall be allowed for:

(7) Fires set for recognized agricultural, silvicultural, range, ecological and wildlife management practices.



The Virginia Department of Environmental Quality has included the following language in their Emission Standards for Open Burning, Permissible open burning, 9 VAC 5-40-5631 (B):

B. Open burning may be used for the following forest management practices provided the burning is conducted in accordance with the Department of Forestry's smoke management plan:

- 1. To reduce forest fuels and minimize the effect of wild fires.*
- 2. To control undesirable growth of hardwoods.*
- 3. To control disease in pine seedlings.*
- 4. To prepare forest land for planting or seeding.*
- 5. To create a favorable habitat for certain species.*
- 6. To remove dead vegetation for the maintenance of railroad, highway and public utility right-of-way.*

While I feel that these examples provide a good starting point, the exemption language for West Virginia should be tailored to fit the needs of the WV DEP as well as the needs of the agencies conducting the prescribed burning within this state. In particular, I like the language included in Kentucky's exemption, as it covers the range of purposes for which we would like to conduct prescribed burning, with the exception of agricultural purposes. With several small changes, I feel that the inclusion of similar language in the WV Code for open burning (regulation 6) would suite our needs and I request that adequate language to cover the range of land management related prescribed burning activities is incorporated in 45CSR6-3. My staff is willing work to with your agency in order to tailor this language specific to the situation for West Virginia. Additionally, it is my understanding that many other federal and state agencies within West Virginia have an interest in the use of prescribed fire as a management tool. I suggest that any requests from your agency for help drafting the specific language should also involve these other agencies interested in prescribed fire. These agencies have received copies of this comment letter.

I would like to thank you for the opportunity to comment on the proposed revisions to 45CSR6. If you have any questions or would like to discuss these comments, please don't hesitate to call our Air Quality Specialist, Andrea Stacy, at 304-636-1800 ext. 314.

Sincerely,



CLYDE N. THOMPSON
Forest Supervisor

cc: Randy Dye - WV Division of Forestry, Maureen Hyzer - George Washington and Jefferson National Forests, Calvin Hite - NPS New River Gorge National River, Tom Chapman - US Fish and Wildlife Service, Frank Jezerio - WV Department of Natural Resources, Thomas Minney - The Nature Conservancy, Stephanie Timmermeyer - WV Department of Environmental Protection, Fred Durham - WV Department of Environmental Protection



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Regional Fire Management Office
3100 Desert Road
Suffolk, VA 23434



In Reply Refer To:
FWS/Region 5/NWRS/RFMC

July 5, 2007

Mr. John A. Benedict
Director, Division of Air Quality
West Virginia Department of Environmental Protection
601 57th Street
Charleston, WV 25304

Dear Mr. Benedict:

The West Virginia Department of Environmental Protection, Division of Air Quality is currently accepting public comments on proposed revisions to 45CSR6, To Prevent and Control Air Pollution From Combustion of Refuse. This regulation covers all open burning within the State of West Virginia. In behalf of the Northeast Region, U.S. Fish and Wildlife Service, and more specifically National Wildlife Refuges within the State of West Virginia, I would like to submit comments on proposed revisions to this regulation.

The Environmental Protection Agency recognizes that fire plays an important role in many ecosystems (*Interim Air Quality Policy on Wildland and Prescribed Fires 1998*), and it is now widely understood that prescribed fire can be an important tool for restoring some of these areas to more natural fire cycles. National Wildlife Refuges, in many of their mission statements, have as a primary objective the restoration and/or maintenance of wildlife species habitat and fire has long been recognized as an important tool to achieve this. The Department of Interior has instructed all land management units under its jurisdiction to implement invasive species control programs where needed, and prescribed fire is a potential tool to assist in eradication of non-native plants.

The U.S. Fish and Wildlife Service owns and manages four properties in West Virginia. The largest of these holdings is the Canaan Valley National Wildlife Refuge containing roughly 16,000 acres in Tucker County. Prescribed burning was used there as a management tool in 2002 and 2004, and Refuge staff would like to continue to have this option available to them for such purposes as maintaining open meadows, promoting native grasslands, control of invasive species, promoting aspen regeneration, and reducing hazardous forest fuels. The Ohio River Islands National Wildlife Refuge contains approximately 3,000 acres of riparian property along the Ohio River in Ohio, Wood, and Cabell Counties. Although staff there have yet to use fire as a management tool, there has been some interest in exploring the use of prescribed fire to help control invasive plant species, prepare sites for reforestation, or maintain openings. The National Conservation Training Center in Jefferson County, though not part of the Northeast Region, is administered by our national office and the campus contains some grasslands that may require fire as a management tool to maintain their desired condition. Finally, the White

Sulphur Springs National Fish Hatchery in Greenbrier County is a small tract of 25 acres with no planned use of prescribed or other open burning.

I am concerned that the proposed 45CSR6-3 regulation that addresses exclusions to the open burning prohibition does not acknowledge accepted land management practices such as silvicultural, ecological, wildlife management, and reduction of hazardous fuels. Other states such as Virginia and Kentucky have allowed for these exceptions, and I would hope that West Virginia would be of similar mind. It is my understanding that the National Park Service and U.S. Forest Service (Monongahela National Forest) have expressed similar concerns. We in the Fish and Wildlife Service are prepared to assist your office in drafting wording that will accommodate our land management concerns while at the same time ensuring that your intentions in defining State air quality regulations are achieved.

Thank you for providing an opportunity to comment. Questions can be addressed to me at 757-986-3409 ext. 101 or to Erin Holmes at Canaan Valley National Wildlife Refuge, phone 304-866-3858 ext. 22. Thank you for your consideration.

Sincerely,

Allen R. Carter

Allen R. Carter
Fire Management Officer
Northeast Region, USFWS





United States Department of the Interior



FISH AND WILDLIFE SERVICE

Canaan Valley National Wildlife Refuge
HC 70 Box 200
Davis, West Virginia 26260

July 5, 2007

John A. Benedict
Director, Division of Air Quality
WV Department of Environmental Protection
601 57th Street
Charleston, WV 25304

07-06-07P02:17 RCVD

Dear Mr. Benedict:

This letter constitutes my comments on the WV DEP – Division of Air Quality proposed rule, 45CSR6 (To Prevent and Control Air Pollution From Combustion of Refuse) which establishes the Open Burning Regulations for the State of West Virginia.

Canaan Valley National Wildlife Refuge is entrusted with protecting and managing habitat for species designated as trust resources, including species federally listed as threatened or endangered and migratory birds. To meet this purpose, we implement a variety of management strategies, including the use of prescribed burns. In recent years, we have used controlled burns of approximately 110 acres of old fields to maintain them as grasslands for grassland-obligate migratory birds including Henslow's sparrows, grasshopper sparrows, and bobolinks, species recognized as rare in West Virginia by the Division of Natural Resources. Prescribed fire may also be a valuable tool for maintaining early-successional habitat and shrublands, an important habitat type for a suite of migratory birds, reducing fuel hazards, and to meet other resource management goals. Our Fire Management Plan, developed in 2002 and revised in 2004, outlines these objectives. As a NEPA document, the Fire Management Plan underwent public review. No adverse comments were received.

We request the West Virginia Department of Environmental Protection incorporate a specific exemption for prescribed burning for land management activities in the revision of 45CSR6.

Thank you for the opportunity to comment on the proposed rule change. If you have any questions regarding these comments, please contact me at 304-866-3858 ext 22.

Sincerely,

Erin Holmes
Acting/ Deputy Refuge Manager

TAKE PRIDE[®]
IN AMERICA

July 6, 2007

07-10-07P01:33 RCVD

John A. Benedict
Director, Division of Air Quality
WV Department of Environmental Protection
601 West 57th Street
Charleston, WV 25304

Dear Mr. Benedict,

It has come to my attention that the West Virginia Department of Environmental Protection is currently accepting comments on Proposed Rule 45CSR6- To Prevent and Control Air Pollution from Combustion of Refuse. I appreciate the opportunity to comment.

The Nature Conservancy's mission is to preserve the plants, animals and natural communities that represent the diversity of life on Earth by protecting the lands and waters they need to survive. To achieve this mission we have developed a strategic, science-based planning process, called Conservation by Design, which helps us identify the highest-priority places that, if conserved, promise to ensure biodiversity over the long term to achieve meaningful lasting conservation results. The Nature Conservancy has identified that fire exclusion in fire dependent ecosystems is one of the principal threats to conservation in many of the sites where we work. As a result, the Conservancy supports the use of prescribed fire to restore and maintain areas where fire is an integral part of the ecosystem.

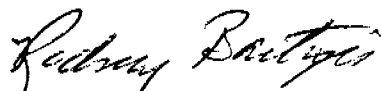
West Virginia possesses a remarkable array of significant conservation areas with high concentrations of large forest blocks and rare species. Many of these high priority areas are imbedded in fire dependent forest community types. By way of example, some of the major fire dependent ecosystems represented in West Virginia would include the oak-pine-hickory forests in the Ridge and Valley portions of West Virginia, barrens and outcrops, pine-oak-heath woodlands, and the rare pine barren communities on North Fork Mountain. Data suggests that many of these forest types had frequent fire return intervals that made them dependent on natural fires. For the past several decades fire in these systems has been suppressed, leading to changes in the forest composition, and, in places, a general increase in biomass (i.e. stems per acre). The changes in forest composition has led to declines in the regeneration of oak forests, and increased potential for wildfires.

In order to reverse this trend, The Nature Conservancy recommends addressing the forest changes that affect biodiversity and forest composition through the use of prescribed fire. We have been working with partners across the United States and the world to successfully implement a Fire Initiative and Fire Learning Network to promote the use of fire as a management tool in appropriate areas. The Conservancy has strong partnerships with the U.S. Department of Agriculture and the U.S. Department of Interior to research and implement effective management through the use of fire. The Conservancy has been supportive of efforts by the U.S. Forest Service to effectively use fire as a management tool in appropriate areas of the Monongahela National Forest, as addressed by their recent update of their Land and Resource Management Plan.

In light of the importance of the use of fire as a management tool to effectively manage fire dependent systems in West Virginia, I would request that you include language in Proposed Rule 45CSR6- To Prevent and Control Air Pollution from Combustion of Refuse that would allow an exemption or exclusion for qualified agencies and entities such as the U.S. Forest Service, U.S. Fish and Wildlife Service, The Nature Conservancy, and others. Such an exemption should be for the use of fire as a management tool for recognized ecological, silvicultural, fuels reduction, and wildlife management practices. Without this exemption The Nature Conservancy and others may not be able to fully implement management activities to restore fire dependent systems and sites in WV. Not being able to implement management activities based on the use of fire could lead to further decline or change of our native forest types, and subsequently have negative effects on the important concentrations of biodiversity in West Virginia.

Should you have any questions, or would like to discuss this issue further, please feel free to contact me. I will be happy to work with you and your staff to explore language that may be effective, and to further discuss the importance of fire as a management tool for forests and biodiversity in West Virginia.

Sincerely yours,

A handwritten signature in cursive script, reading "Rodney Bartgis".

Rodney Bartgis
State Director

From: Paula Finck <paulaфинck@yahoo.com>
To: <comments@wvdep.org>
Date: 6/27/2007 10:08:43 PM
Subject: Re: air quality rules

Now is the time to put into effects the toughest air quality rules for the sake of the present and future health of the citizens of these United States of America. It is your job and your responsibility to the people.

Respectfully yours,
Paula Finck

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45CSR6

CONTROL OF AIR POLLUTION FROM COMBUSTION OF REFUSE

RESPONSE TO COMMENTS

On June 8, 2007, the Division of Air Quality (DAQ) commenced a thirty day public comment period and subsequently held a public hearing on July 9, 2007 to accept oral comments on proposed revisions to legislative rule 45CSR6. Written comments were also accepted through 6:00 PM on Monday, July 9, 2007. Four commenters submitted written comments regarding proposed revisions to rule 45CSR6, and no commenter provided verbal comments. DAQ addresses the written comments below.

I. COMMENTER: West Virginia Division of Natural Resources

COMMENT A. The commenter states, *"We request the final rule be revised to include specific exemptions that cover a range of prescribed burning activities on public lands (i.e., 45CSR6 - 3.1.a through 3.1.c). Specifically, we recommend the following language be included in 45CSR6 for State and Federal lands within West Virginia.*

Open burning (e.g., prescribed or controlled burning) may be used for the following wildlife, forest and associated land management activities:

1. *To improve forest health;*
2. *To maintain and restore wildlife habitat;*
3. *To reduce forest fuels and minimize the effort of wild fires;*
4. *To prepare land for planting or seeding (site preparation);*
5. *To restore fire dependent forest ecosystems;*
6. *To integrate with other control methods for use in eradication of nonnative invasive plants."*

RESPONSE A. DAQ has revised the rule, adding language which accommodates prescribed burning, including a definition of the term.

II. COMMENTER: U.S. Department of Agriculture

COMMENT A. The commenter states, *"I am concerned that the existing language for Open Burning in WV Code (45 CSR 6-3) does not include an exemption specific to prescribed burning for land management purposes. I am requesting that your agency revise the final rule to include a specific exemption that covers the range of prescribed burning activities on the forest (45 CSR 6-3.1.a through 3.1.c)."*

RESPONSE A. DAQ refers the commenter to Response IA.

III. COMMENTER: U.S. Department of the Interior

COMMENT A. The commenter states, *"We request the West Virginia Department of Environmental Protection incorporate a specific exemption for prescribed burning for land management activities in the revision of 45CSR6."*

RESPONSE A. DAQ refers the commenter to Response IA.

COMMENT B. The commenter states, *"I am concerned that the proposed 45CSR6-3 regulation that addresses exclusions to the open burning prohibition does not acknowledge accepted land management practices such as silvicultural, ecological wildlife management, and the reduction of hazardous fuels."*

RESPONSE B. DAQ refers the commenter to Response IA.

IV. COMMENTER: The Nature Conservancy

COMMENT A. The commenter states *"..... the Conservancy supports the use of prescribed fire to restore and maintain areas where fire is an integral part of the ecosystem. I would request that you include language in Proposed Rule 45CSR6 that would allow an exemption or exclusion for qualified agencies..... Such an exemption should be for the use fire as a management tool for recognized ecological, silvicultural, fuels reduction, and wildlife management practices."*

RESPONSE A. DAQ refers the commenter to Response IA.