

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

Form #3

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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

AGENCY: WV Oil and Gas Conservation Commission TITLE NUMBER: 39

CITE AUTHORITY: §22C-9-4

AMENDMENT TO AN EXISTING RULE: YES NO

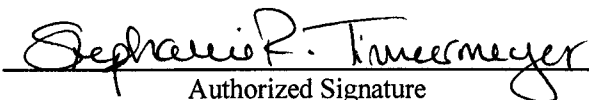
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1

TITLE OF RULE BEING AMENDED: Rules of the Commission

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

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


Authorized Signature



west virginia department of environmental protection

Oil and Gas Conservation Commission
601 57th Street, Charleston, WV 25304

Joe Manchin III, Governor
Stephanie R. Timmermeyer, Cabinet Secretary
www.wvdep.org

July 28, 2005

LRMRC
Main Capitol, Room MB 47

Betty Ireland
Secretary of State's Office
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305

RE: Rules of the Commission

Dear Secretary Ireland and Members of the LRMRC,

I hereby authorize the filing of the agency approved rule, proposed Legislative Rule Title 39, Series 1, "Rules of the Commission" with the Secretary of States Office and the LRMRC.

Sincerely,

Barry K. Lay
Chairman

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

July 28, 2005

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

Brett Loflin, Program Director
601 57th Street
Charleston, WV 25304

Phone: (304) 926-0499 x-1657 Fax: (304) 926-0452

Email: bloflin@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)

Barry Lay, Chairman, 943 Mineral Road, Glenville WV 26351 (330) 498-5754
James Martin, member, 601 57th St., Charleston, WV 25304 (304) 926-0440
Randy Huffman, member 601 57th St. Charleston, WV 25304 (304) 926-0440
Bob Radabaugh, member, PO Box 172, Sand Fork, WV 26430 (304) 462-7006
Anthony Gum, member, 47 Meade St., Buckhannon, WV 26201 (304) 473-8484

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:

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

d. Attach findings and determinations and reasons:

Attached

TRANSCRIPT

**Public Hearing for WV Oil and Gas Conservation Commission 39CSR1
Rule Changes
6 p.m., Wednesday, July 20, 2005
DEP Headquarters
Charleston, WV**

David McMahon: David McMahon, m c m a h o n, with Mountain State Justice, 922 Quarrier Street, 5th Floor, Charleston 25301. Comment first on the Conservation Commission Rules. I simply say that I support the changes being made.

I submit this transcript and swear that this is a true and accurate copy, to the best of my ability, of the public hearing held on Wednesday, July 20, 2005 for WV Oil and Gas Conservation Commission 39CSR1.

***Anne Howell, Administrative Secretary, Public Information Office
Thursday, July 21, 2005***

RESPONSE TO COMMENTS - - 39CSR1

The public hearing for the amendments to the Rules of the Commission, 39CSR1 was held on July 20, 2005 at 6:00 p.m. David McMahon of Mountain State Justice made oral comments. No written comments were submitted. Those in attendance were Anne Howell, Brett Loflin, and James Martin, all with the WVDEP, and David McMahon.

COMMENT A:

Mr. McMahon simply stated that he supports the changes being made.

RESPONSE A:

No response necessary.

WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION
OIL AND GAS CONSERVATION COMMISSION

BRIEFING DOCUMENT

Rule Title: 39CSR1

A. AUTHORITY: WV Code 22C-9-4

B. SUMMARY OF RULE: Proposal to amend existing rule 39CSR1. Series 1 is a legislative rule in place to enforce the provisions in WV Code §22C-9-1 et seq. The rule pertains to the approval for and drilling of deep wells in West Virginia. 39CSR1 contains provisions for the proper spacing of deep wells as well as provisions for the protection of correlative rights via pooling and unitization of lands in connection with deep well drilling in West Virginia. The first substantive change is found in section 3.7. This provision will allow the commission the option to either issue an order or enter into a consent agreement to administratively dispose of matters involving violations of the code, rules or orders. Currently, the only remedy is circuit court, which is overly burdensome and costly to both the agency and the operator that committed such a violation. The provisions for injunctive relief and criminal prosecution would still exist as they are provided for in the statute. Second, the amendment to section 4.4 ensures that an applicant seeking approval to drill a deep well has complied with the statute, rules and orders issued by the commission. Third, section 6.5 allows for the establishment of escrow accounts to protect the correlative rights of royalty owners and operators with working interests connected with the production of hydrocarbons from a deep well. The escrow account will ensure the equitable distribution of revenue generated from the deep well production of hydrocarbons.

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:

It is necessary to amend the existing rule to properly and effectively enforce the provisions of WV Code §22C-9. Currently the commission has no mechanism to administratively dispose of matters concerning violations of the statute, rules or orders. In addition the language detailing escrow accounts further helps to protect correlative rights.

D. FEDERAL COUNTERPART REGULATIONS: No federal counterpart regulations exist; therefore, no determination of stringency is required.

E. CONSTITUTIONAL TAKINGS DETERMINATION: In accordance with W. Va. Code §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 June 8, 2005 meeting, the Environmental Protection Advisory Council reviewed and discussed this proposed rule. The Council's comments are contained in the attached minutes.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 39CSR1, Rules of the Commission

Type of Rule: Legislative Interpretive Procedural

Agency: Oil and Gas Conservation Commission

Address: 601 57th Street, SE
Charleston, WV 25304

Phone Number: (304) 926-0450 Email: bloflin@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.

There will be no additional cost associated with the proposed changes. There may be some reduction in costs if the Commission can enter into consent agreements to deal with violations instead of going directly to circuit court. May be some minimal revenue generated from consent agreements if an assessment results. It is not fiscally prudent to try to predict and increase or decrease in cost or revenues at this time.

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	2005 Increase/Decrease (use "-")	2006 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Equipment	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: 39CSR1, Rules of the Commission

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

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

There will be minimal or no impact on costs or revenues. Again, it is not possible at this time to predict if any assessments will be made due to consent agreements, however, any assessments will be minimal and not have an effect on costs or revenues.

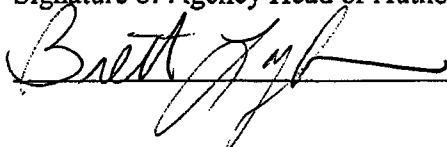
MEMORANDUM

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.

There are no areas of vagueness or technical defects. the rule does not have a fiscal impact due to the reasons stated above.

Date: May 19, 2005

Signature of Agency Head or Authorized Representative



West Virginia Department of Environmental Protection

ADVISORY COUNCIL MEETING MINUTES

Wednesday - June 8, 2005

601 57th Street, SE, Charleston, WV

Dolly Sods Conference Room – 1st Floor

ATTENDEES:

Advisory Council Members:

Larry Harris

Jackie Hallinan

Rick Roberts

Lisa Dooley

Bill Raney

Karen Price

DEP:

Stephanie R. Timmermeyer, Cabinet Secretary

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

Mike Zeto, WVDEP

Charlie Sturey, WVDEP

Jessica Greathouse, Chief Communication Officer – WVDEP – Public Information Office

James Martin, Chief, WVDEP - Office of Oil & Gas

Brett Loflin, WV Oil and Gas Conservation Commission

Dave Bassage- WVDEP

Greg Adolpson – WVDEP

Jim Mason – WVDEP

Fred Durham – WVDEP

Jim Mason – WVDEP

Mike Johnson – WVDEP

VISITORS:

Linda Tennant, Spilman, Thomas, Battle

Don Garvin – WVEC

Bob Asplund - Dominion

Karen Watson, WVDEP – Assistant General Counsel, called the meeting to order at 10:00 a.m.

Proposed rules for the 2006 legislative session are as follows:

- **45CSR1 “Control and Reduction of Nitrogen Oxides from Non-Electric Generating Units as a Means to Mitigate Transport of Ozone Precursors”**

This rule partially fulfills the State’s obligations in response to U.S. EPA’s final rule, *Findings of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group region for Purposes of Reducing Regional Transport of Ozone* 27 Oct 1998, herein referred to as the *NO_x SIP Call*). Essentially, the federal rule requires that large emitters of Nitrogen Oxides (NO_x) significantly reduce emissions and constrains them to set budgets, starting in 2004 and maintaining them thereafter. Flexibility is built in through market-based “cap and trade” provisions which allow sources to buy/sell NO_x emission allowances from /to other program participants. For example, a source which has emitted NO_x in excess of its NO_x allowance allocation may purchase NO_x allowances under the federal NO_x Budget Trading Program to obtain the needed NO_x emission allowances to cover its actual NO_x emissions during an ozone season. Conversely, a source which emits fewer tons of NO_x than its NO_x allowance allocation may either bank or sell (trade) the excess NO_x allowances to another sources which needs them to cover its excess NO_x emissions.

45CSR1 applies to large fossil fuel-fired stationary sources (large industrial boilers) with heat inputs greater than 250 mmBtu/hr. The Department of Environmental Protection, Division of Air Quality (DAQ) addresses Electric Generation Units (EGUs) in a separate rulemaking, 45CSR26. 45CSR1 also applies to large cement kilns and internal combustion engines which emitted more than one ton per day of NO_x from May 1 through September 30, 1995, although these sources are not subject to the NO_x Budget Trading Program.

Comments:

How will this relate to the new rule 40?

Rule 40 will repeal Rule 1 in 2009.

Are these kinds of trading effective in lowering NO_x emission?

Yes, West Virginia has dropped from one of the highest to one of the lowest states.

If one is testing, how do you see which sources account for improvement?

Have CEMS on stacks so we can analyze data.

- **45CSR15 – “Emission Standards for Hazardous Air Pollutants Pursuant to 40CFR Part 61”**

This rule establishes and adopts national emission standards for hazardous air pollutant (NESHAP) and other regulatory requirements promulgated by the United States Environmental Protection Agency (USEPA) pursuant to 40CFR part 61 and section 112 of

the federal clean Air Act, as amended (CAA). This rule codifies general procedures and criteria to implement emission standards for stationary sources that emit (or have the potential to emit) one or more of the eight substances listed as hazardous air pollutants in 40 CFR §61.01(a). The rule incorporates by reference the NESHAP standards of 40 CFR Parts 61 and 65 (consolidated Federal Air Rule), to the extent referenced in 40CFR part 61, promulgated as of June 1, 2005. The rule also adopts associated appendices, reference methods, performance specifications and other test methods which are appended to these standards and contained in 40 CSR parts 61 and 65. Any person who constructs, reconstructs, modifies or operates any source subject to the provisions of 40 CFR Part 61 must comply with the applicable NESHAPS and this rule.

45CSR15, in conjunction with 45CSR34, establishes general provisions for emission standards for hazardous air pollutants (NESHAP) and other regulatory requirements promulgated by USEPA pursuant to section 112 of the federal Clean Air Act, as amended. 45CSR34 incorporates hazardous air pollutant standards codified by USEPA under 40CFR part 63 whereas 45CSR15, incorporates hazardous air pollutant standards promulgated by USEPA under 40 CFR Part 61.

This revised rule incorporates by reference the following new or revised NESHAP standards promulgated as of June 1, 2005: National Emission Standards for Hazardous Air Pollutants for Asbestos.

No Comments

- **45CSR16 – “Standards of Performance for New Stationary Sources Pursuant to 40CFR Part 60”**

This rule establishes and adopts national standards of performance for new stationary sources and other regulatory requirements promulgated by the United States Environmental Protection Agency (USEPA) pursuant to section 111(b) of the federal Clean Air Act, as amended (CAA). This rule codifies general procedures and criteria to implement standards of performance for new stationary sources set forth in 40 CFR Part 60. The rule incorporates by reference New Sources Performance Standards (NSPS) promulgated as of June 1, 2005. The rule also adopts associated appendices, reference methods, performance specifications and other test methods which are appended to such standards. Any person who constructs, modifies, reconstructs or operates an affected facility after the effective date of any NSPS under 40 CFR Part 60 must comply with the applicable NSPS and this rule.

This revised rule incorporates by reference the following new or revised NSPS standards promulgated as of July 1, 2005: Standards of performance for Industrial-Commercial-Institutional Steam Generating units; Stationary Gas Turbines; Steel Plants; and new and Existing Stationary Sources: Electric Utility Steam Generating Units (CAMR).

No Comments

- **45CSR25 – “To Prevent and Control Air Pollution from Hazardous Waste Treatment Storage or Disposal Facilities.”**

This rule establishes and adopts national standards of performance for new stationary sources and other regulatory requirements promulgated by the United States Environmental Protection Agency (USEPA) pursuant to the Resource Conservation and Recovery Act, as amended (RCRA). This rule codifies general procedures and criteria to implement emission standards set forth in the Code of Federal Regulations as listed in Table 25-A of the rule. The rule also adopts associated appendices, reference methods, performance specifications and other test methods, which are appended to these standards. Any person, who constructs, reconstructs, modifies or operates any hazardous waste treatment, storage, or disposal facility must comply with the West Virginia Hazardous Waste management Program, the codified federal emission standards, and this rule.

45CSR25 establishes a program of regulation over the treatment, storage, and disposal of hazardous wastes in order to achieve and maintain such levels of air quality as will protect the public health and safety and the environment from the effects of improper, inadequate, or unsound treatment, storage, or disposal of hazardous wastes.

This revised rule incorporates by reference the following provisions of 40 CFR Part 262 promulgated as of June 1, 2005: National Environmental Performance Track Program.

Comments:

What does the term “constituents” mean and how does one decide whether a source has prevented emissions that would cause harm under section 1.1.b of the rule?

Look at the definition of “hazardous waste” and prevention language is meant to set forth overall purpose of the rule.

Does the agency consult with DHHR or other public health officials?

No, the agency uses a risk-based approach and has a toxicologist employed. It also looks to EPA.

- **45CSR33 – “Acid Rain Provisions and Permits”**

This rule establishes and adopts the general provisions and operating permit program requirements for affected sources under the Acid Rain Program promulgated by the United States Environmental Protection Agency (USEPA) under title IV of the Clean Air Act, as amended (CAA). The rule also adopts associated appendices, reference methods, performance specifications and other test methods which are appended to these provisions.

Under the Acid Rain Program and 45CSR33, no person may construct, modify, or operate or cause to be constructed, modified, or operated, an Acid Rain Source in violation of 40CFR Parts 72 through 77.

Title IV of the CAA requires each state to implement an operating permit system conforming to Title IV and Title V of the CAA, as amended. 45CSR33 incorporates by reference the federal counterpart regulation 40 CFR Parts 72 through 77. USEPA approved West Virginia's Acid Rain Program with its approval of the state's Title V Operating Permit Program on December 15, 1995.

This revised rule incorporates by reference the following revisions to 40CFR Parts 72 through 77 promulgated as of June 1, 2005: Permits Regulation, Sulfur Dioxide Allowance System, Sulfur Dioxide Opt-Ins, continuous Emission Monitoring, Excess Emissions (CAIR & CAMR).

No Comments

- **45CSR34 – “Emission Standards for Hazardous Air Pollutants For Source Categories Pursuant to 40 CFR Part 63**

This rule establishes and adopts national emission standards for hazardous air pollutants (NESHAP) and other regulatory requirements promulgated by the United States Environmental Protection Agency (U.S. EPA) pursuant to section 112 of the federal Clean Air Act, as amended (CAA). This rule codifies general procedures and criteria to implement emission standards for stationary sources that emit, or have the potential to emit, one or more of the hazardous air pollutants set forth in section 112(b) of the CAA. The rule incorporates by reference the NESHAP standards of 40 CFR Parts 63 and 65 (Consolidated Federal Air Rule), to the extent referenced in 40 CFR Part 63, promulgated as of June 1, 2005. The rule also adopts associated appendices, reference methods, performance specifications and other test methods which are appended to these standards and contained in 40 CFR Parts 63 and 65. Any person who constructs, reconstructs, modifies or operates any source subject to the provisions of 40 CFR Part 63 must comply with the applicable NESHAPS and this rule.

45CSR34, in conjunction with 45CSR15, establishes general provisions for emission standards for hazardous air pollutants and other regulatory requirements promulgated by U.S. EPA pursuant to section 112 of the federal Clean Air Act, as amended. 45CSR34 incorporates hazardous air pollutant standards codified by U.S. EPA under 40 CFR Part 63 whereas 45CSR15 incorporates hazardous air pollutant standards promulgated by U.S. EPA under 40 CFR Part 61.

This revised rule incorporates by reference the following new or revised NESHAP standards promulgated as of June 1, 2005: National Environmental Performance Track Program, National Emission Standards for Hazardous Air Pollutants for Source Categories, Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks, Plywood & Composite Wood Products; Effluent Limitations Guidelines and Standards for Timber Products Point Source Category; List of HAPs, Lesser Quantity Designations, Source Category List, Printing, Coating & Dyeing of Fabrics and Other

Textiles, Stationary Combustion Turbines, Solvent Extraction for Vegetable Oil Production, Industrial, Commercial, Institutional Boilers and Process Heaters, Secondary Aluminum Production, Coke Ovens: Pushing, Quenching, and Battery Stacks, List of Hazardous Air Pollutants, Petition Process, Lesser Quantity Designations, Source Category List; Petition to Delist of Ethylene Glycol Monobutyl Ether, Organic Hazardous Air Pollutants from Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipments Leaks, Coke Ovens: Pushing, Quenching, and Battery Stacks, Leather Finishing Operations, Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units, Revision of December 2000 Regulatory Finding on the Emissions of HAPs from Electric Utility Steam Generating Units & Removal of Coal- and Oil-Fired Electric Utility Steam Generating Units from Section 112(c) List, Generic MACT; Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations, Coke Oven Batteries, Miscellaneous Coating Manufacturing, Pharmaceuticals Production, Asphalt Processing & Asphalt Roofing Manufacturing and Iron and Steel Foundries.

No Comments

- **45CSR37 – “Mercury Budget Trading Program to Reduce Mercury Emissions”**

This rule establishes the general provisions and designated representative, permitting, allowance and monitoring provisions for the Mercury (Hg) Budget Trading Program, as a means of reducing national mercury emissions, pursuant to the federal Clean Air Mercury Rule (CAMR) established under Section 111 of the Clean Air Act (CAA) and 40 CFR 60, Subpart HHHH.

This rule partially fulfills the State’s obligations in response to the United States Environmental Protection Agency’s (U.S. EPA) final rule, *Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units* (15 March 2005, at FR XXXXX). The federal rule establishes standards of performance for mercury (Hg) for new and existing coal-fired electric utility steam generating units (utility units). This rule establishes a mechanism by which Hg emissions from new and existing coal-fired utility units are capped at specific nation-wide levels. U.S. EPA has specified that annual Hg emission reductions be implemented in two phases. The first phase of Hg reductions starts in 2010 and the second phase begins in 2018, and continues thereafter. Flexibility is built in through market-based “cap and trade” provisions which allow sources to buy or sell Hg emission allowances from or to other program participants.

45CSR37 applies to coal-fired electric utility steam generating units that have greater than 25 MW_e generating capacity.

Comments:

How will this affect Industrial boilers?

The rule does not cover these sources.

What kind of monitoring is required?

Have to install CEMS.

What happens when there is litigation?

If court remands, we would withdraw the rule.

Does the rule apply to natural gas-fired units?

No, only coal-fired.

Does the rule establish new fees?

No.

John Benedict informed the Council of the following reductions:

Nationally

2010 – 22%

2018 – 69%

WV:

2010 – 43%

2018 – 77%

- **45CSR39 – “Control of Annual Nitrogen Oxide Emissions to Mitigate Interstate Transport of Fine Particulate Matter and Nitrogen Oxides”**

This rule establishes general provisions and the designated representative, permitting, allowance, monitoring, and opt-in provisions for the state CAIR NO_x Annual Trading Program pursuant to the federal Clean Air Interstate Rule (CAIR) under Section 110 of the Clean Air Act (CAA), 40 CFR Part 96, Subparts AA through II, and 40 CFR §51.123 for state implementation plans as a means of mitigating interstate transport of fine particulates and nitrogen oxides (NO_x).

This rule partially fulfills the State’s obligations in response to the United States Environmental Protection Agency’s (U.S. EPA) final rule, *Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to*

Acid Rain Program; Revisions to the NO_x SIP Call (12 May 2005, at FR 25162). The federal rule requires that large emitters of NO_x reduce annual emissions through the constraint of set budgets. U.S. EPA is specifying that annual NO_x emission reductions be implemented in two phases. The first phase of NO_x reductions starts in 2009; the second phase starts in 2015, and continues thereafter. The NO_x emission reduction requirements are based on controls that are known to be highly cost effective for electric generating units. Flexibility is built in through market-based “cap and trade” provisions which allow sources to buy or sell NO_x emission allowances from or to other program participants. Reducing upwind NO_x emissions will assist downwind PM_{2.5} and 8-hour ozone nonattainment areas in achieving the National Ambient Air Quality Standards (NAAQS).

45CSR39 applies to large fossil fuel-fired electric generating units that have greater than 25 MW_e generating capacity. The CAIR NO_x Ozone Season Trading Program requirements are set forth in 45CSR40.

Comments:

How will this affect industrial boilers?

It will not. It only affects electric utilities.

Is there a set-aside provision?

Yes.

Agency should consider using the money to clean up streams impacted by acid rain.

- **45CSR40 – “Control of Ozone Season Nitrogen Oxide Emissions to Mitigate Interstate Transport of Ozone and Nitrogen Oxides”**

This rule establishes the general provisions and the designated representative, permitting, allowance, monitoring, and opt-in provisions for the state CAIR NO_x Ozone Season Trading Program pursuant to the federal Clean Air Interstate Rule (CAIR) under Section 110 of the Clean Air Act (CAA), 40 CFR Part 96, Subparts AAAA through IIII, and 40 CFR §51.123 for state implementation plans as a means of mitigating interstate transport of ozone and nitrogen oxides (NO_x).

This rule partially fulfills the State’s obligations in response to the United States Environmental Protection Agency’s (U.S. EPA) final rule, *Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_x SIP Call* (12 May 2005, at FR 25162). The federal rule requires that large emitters of NO_x reduce ozone season emissions through the constraint of set budgets. U.S. EPA is specifying that ozone season NO_x emission reductions be implemented in two phases. The first phase of ozone season NO_x reductions starts in 2009; the second phase starts in 2015, and continues thereafter. The NO_x emission

reduction requirements are based on controls that are known to be highly cost effective for electric generating units and large industrial boilers. Flexibility is built in through market-based “cap and trade” provisions which allow sources to buy or sell NO_x emission allowances from or to other program participants. Reducing upwind ozone season NO_x emissions will assist downwind 8-hour ozone nonattainment areas in achieving the National Ambient Air Quality Standards (NAAQS).

Because CAIR subsumes the ozone season NO_x SIP Call trading program, existing NO_x SIP Call rules 45CSR1 and 45CSR26 and their ozone season NO_x reduction provisions must be “sunsetting” by January 1, 2009. Therefore, 45CSR40 contains a repeal clause which effectively “sunsets” these rules, meeting the approvability requirement for implementing CAIR.

45CSR40 applies to large fossil fuel-fired electric generating units that have greater than 25 MW_e generating capacity and large fossil fuel-fired industrial boilers with a heat input greater than 250 mmBtu/hr. This rule also applies to affected cement kilns and internal combustion engines, by retaining the NO_x SIP Call ozone season NO_x emission reduction requirements for these sources from 45CSR1. These existing requirements do not provide for inclusion in any cap and trade program for cement kilns and internal combustion engines. The CAIR NO_x Annual Trading Program requirements are set forth in 45CSR39.

No Comments.

- **33CSR41 – “Control of Annual Sulfur Dioxide Emissions to Mitigate Interstate Transport of Fine Particulate Matter and Sulfur Dioxide”**

This rule establishes general provisions and the designated representative, permitting, allowance, monitoring, and opt-in provisions for the state CAIR SO₂ Trading Program pursuant to the federal Clean Air Interstate Rule (CAIR) under Section 110 of the Clean Air Act (CAA), 40 CFR Part 96, Subparts AAA through III, and 40 CFR §51.124 for state implementation plans as a means of mitigating interstate transport of fine particulates and sulfur dioxide (SO₂).

This rule partially fulfills the State’s obligations in response to the United States Environmental Protection Agency’s (U.S. EPA) final rule, *Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_x SIP Call* (12 May 2005, at FR 25162). The federal rule requires that large emitters of SO₂ reduce annual emissions based upon the implementation of retirement ratios for SO₂ allowances allocated under the Acid Rain Program. U.S. EPA is specifying that annual SO₂ emission reductions be implemented in two phases. The first phase of SO₂ reductions starts in 2010 and requires retiring SO₂ allowances at a 2:1 ratio; the second phase starts in 2015 and requires retiring SO₂ allowances at a 2.86:1 ratio, and continues thereafter. The SO₂ emissions reductions requirements are based on controls that are known to be highly cost effective for electric generating units. Flexibility is built in through market-based “cap and trade” provisions

which allow sources to buy or sell SO₂ emission allowances from or to other program participants. Reducing upwind SO₂ emissions will assist downwind PM_{2.5} and 8-hour ozone nonattainment areas in achieving the National Ambient Air Quality Standards (NAAQS).

45CSR41 applies to large fossil fuel-fired electric generating units that have greater than 25 MW_e generating capacity.

How was the fiscal note derived?

It is based on how many persons will be necessary to implement the rule.

When will these rules be filed with EPA?

September of 2006 for the CAIR rules and November 2006 for the mercury rule.

- **33CSR1 – “Solid Waste Management Rule”**

This legislative rule establishes requirements for the siting (including location standards), financial assurance, installation, establishment, construction, design, groundwater monitoring, modification, operation, permitting, closure and post-closure care of any solid waste facility that processes, recycles, composts, transfers or disposes of solid waste pursuant to W. Va. Code §22-15-1 et seq. The rule revision will clarify that the State Division of Highways is subject to an exemption from permitting for its construction/demolition wastes associated with highway construction. The rule will also clarify that the beneficial reuse of clean bituminous concrete (asphalt) is not subject to permitting requirements, just as the beneficial reuse of Portland cement is not subject to permitting.

Comments:

Has the agency worked with the Division of Highways on the rule?

Yes.

- **33-CSR20 – “Hazardous Waste Management”**

The purpose of this rule is to provide for the regulation of the generation, treatment, storage, and disposal of hazardous waste to the extent necessary for the protection of the public health and safety and the environment. The rule changes pick up two new federal regulations.

No Comments.

- **35CSR3 – “Coalbed Methane Wells Rule”**

This rule applies to coalbed methane wells. The rule changes are necessary to conform to recent statutory revisions related to spacing. The changes also address new technology allowing for the horizontal drilling of wells.

Comments:

Are operators required to sample both water quality and quantity?

Just quality.

A question was raised about the 100' and 1000' distance requirements from water wells and the agency explained how these provisions work.

A comment was made that landowners are confused by the rule's requirements and some further explanations would be helpful.

- **39CSR1 – “Rules of the Commission”**

The rule is designed to prevent waste, protect correlative rights and to conserve oil and gas in the State of West Virginia and is applicable to all activities subject to the jurisdiction of the Oil and Gas Conservation Commission. Where special field rules apply, the special field rules shall govern to the extent of any conflict. The rule changes are to clarify the agency can enter consent agreements and establish escrow accounts.

No comments.

- **60CSR8 “Environmental Excellence Program Rule”**

This legislative rule establishes the eligibility, procedures, standards and legal documents required for establishing a voluntary environmental excellence program, consisting of incentives to reward facilities that go beyond regulatory requirements.

Comments:

Will the reports that are filed be shared with the public?

Yes, they will be posted on the internet.

Will people pay the \$1000 fee?

From pre-comments, most are willing to pay some amount. The administrative fund will cover the agency's operating costs.

A comment was made that there should be more programs like this, where companies are rewarded for good performance.

Lisa McClung, Director of DWWM, presented several rules under the water program that will be filed in the future. One was the concentrated animal feeding operation (CAFO) rule that was withdrawn by the agency in

the 2005 session. As soon as EPA repromulgates its rule, the State will need to do so, perhaps by an emergency rule.

Then the new law transferring the authority to adopt water quality standards to the DEP was discussed. A question was raised concerning the public's involvement in the process. Ms. McClung responded that the process would be somewhat different from the agency's normal rulemaking.

Karen Watson then presented a list of bills passed by the Legislature during the 2005 regular session and signed by the Governor as follows:

1. SB 428. Creating the Revitalization Environmental Action Plan.

This legislation transfers the litter control and recycling programs from DNR to DEP and transfers the waste tire remediation program from DOH to DEP. The legislation was amended by the House to require the excess funds to be transferred to the state road fund rather than the solid waste reclamation and environmental response fund. SB 428 bill also incorporates the provisions of Senate Bill 42 at 22-15A-12(f) and (k). These provisions provide liability protection on waste tire remediation to bona fide purchasers of property containing waste tires.

2. SB 603. Higher Education Bill – Brownfield Assistance Centers.

This legislation creates a provision in W.Va. Code § 18B11-7 that authorizes Marshall University and West Virginia University to each create Brownfield Assistance Centers for the purpose of acquiring and developing property; seeking federal brownfield assistance funds; and providing assistance to municipalities and local governments for brownfields development.

Comments:

The Council discussed the funding mechanisms under the new law.

3. HB 3354. Oil and Gas Permit Fee Increase.

This legislation increases the permit fees for shallow wells from \$250 to \$400; the permit fees for deep wells from \$250 to \$650; and the reclamation fees for all well activity from \$100 to \$150. This legislation also includes some technical amendments to the statutes governing oil and gas and coal bed methane drilling and production. As introduced, the legislation increased the permit fees for coal bed methane wells from \$250 to \$650 but the legislation was amended by the Senate to eliminate this permit fee increase. In total, this legislation will generate approximately \$350,000 for the Office of Oil and Gas.

4. SB 406. Uniform Environmental Covenant Act.

This legislation clarifies that environmental covenants containing affirmative obligations issued pursuant to the Voluntary Remediation and Redevelopment Act or other federal or state response actions are enforceable and perpetual; provides notice requirements for those placing environmental covenants on

real property; and authorizes the department and local governments to enforce environmental covenants.

Comments:

A question was raised as to local governments.

The agency responded that they are included and have authority under the new law.

5. HB 2723. Environmental Rules Bundle.

This legislation consolidates the rules proposed by DEP and EQB. The DEP rules include revisions to the air, waste, water and mining programs. The EQB's rule relates to water quality standards. The EQB's rule was amended to eliminate Fill Hollow Creek in Preston County that the Board recommended to be included on the Tier 2.5 list. Tier 2.5 waters are waters of special concern and include naturally reproducing trout streams.

6. HB 3236. Thin Seam Coal Tax Applicability.

This legislation clarifies that the special tax on coal production and the special reclamation tax apply to coal produced from thin seams.

7. HB 2333. Environmental Good Samaritan Act.

This legislation protect landowners, groups and individuals who volunteer to reclaim abandoned mineral extraction lands and abate water pollution caused by abandoned mine lands from civil and environmental liability provided such activities are approved by the department and implemented in accordance with the plans approved by the department.

8. HB 3033. Continuation of Special Reclamation Tax.

This legislation extends the temporary special reclamation tax of seven cents for an additional eighteen months thereby maintaining the total special reclamation tax at fourteen cents per ton of coal produced. The legislation also requires the Secretary to evaluate and consider additional bonding mechanisms, such as full cost bonding and the creation of a water quality trust fund.

9. SB 154. Beneficial Reuse of Water Treatment Plant Sludge.

This legislation authorizes the beneficial reuse of water treatment plant sludge and requires the department to develop rules establishing criteria for the beneficial reuse of water treatment plant sludge.

10. SB 287. Transfer of Rulemaking Authority for Water Quality Standards.

This legislation transfers the authority to promulgate water quality standards and the authority to grant reming variances from the Environmental Quality Board to the department.

11. SB 748. Credit for Mitigation.

This legislation authorizes the secretary to grant credit for mitigation required by the Corps of Engineers pursuant to permit issued under Section 404 of the Clean Water Act when such mitigation satisfies mitigation required by the West Virginia Water Pollution Control Act.

12. SB 700. Creation of the Community Infrastructure Investment Program.

This legislation authorizes department to grant approval for the construction of privately financed water and sewage treatment facilities without the requirement of a certificate of need and convenience from the Public Service Commission provided that the project results in economic development and improvement of water quality. This legislation also authorizes municipal utilities and public service districts to enter into community service agreements with private developers for the purpose of constructing or expanding public utilities. This legislation also requires the secretary to promulgate emergency rules to implement the program.

Comments:

Two members expressed interest in the future rulemaking efforts and any stakeholders group.

13. HB 3356. Increasing authority of the Solid Waste Management.

This legislation requires the SWMB to conduct biannual performance reviews of county and regional solid waste authorities and grants the SWMB with the authority to supersede or exercise the powers granted to county or regional solid waste authorities that operate a solid waste facility

14. SB 455. Financing of Environmental Control Activities.

This Legislation authorizes the public service commission to review and approve the use of environmental control bonds for environmental control activities by certain qualified electric utilities.

The next meeting date was scheduled for September 15, 2005 – 1:00 p.m. – 3:00 p.m. – Trish will contact everyone with room location and agenda.

Karen Watson adjourned the meeting.

**TITLE 39
LEGISLATIVE RULE
WEST VIRGINIA OIL AND GAS CONSERVATION COMMISSION**

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**SERIES 1
RULES OF THE COMMISSION**

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE**§39-1-1. General.**

1.1. Scope. -- All rules and regulations of a general nature herein promulgated are to prevent waste, protect correlative rights and to conserve oil and gas in the State of West Virginia and are applicable to all activities subject to the jurisdiction of the Oil and Gas Conservation Commission and fields developed subsequent to their adoption, except as may be amended, modified, altered or enlarged generally or in specific pools or fields by orders hereafter issued by the Commission. Where special field rules apply, the special field rules shall govern to the extent of any conflict.

1.2. Authority. -- W. Va. Code §22C-9-4.

1.3. Filing Date. --

1.4. Effective Date. --

§39-1-2. Definitions.

2.1. "Annual" means twelve consecutive calendar months beginning January 1 and ending December 31.

2.2. "Authorized Agent" means a representative as designated by the Commission.

2.3. "Barrel" means forty-two (42) United States gallons of 231 cubic inches each at a temperature of sixty (60) degrees Fahrenheit.

2.4. "Code" means the Code of West Virginia, 1931, as amended.

2.5. "Commission" means the West Virginia Oil and Gas Conservation Commission, composed of three (3) members appointed by the Governor, the Secretary of the Department of Environmental Protection and the Chief of the

Office of Oil and Gas of the Department of Environmental Protection.

2.6. "Commissioner and Chairman" means the person appointed by the Governor, possessing a degree from an accredited college or university in petroleum engineering or geology and must be a registered professional engineer.

2.7. "Completion" means that an oil well is considered completed when the well is first capable of producing new oil through wellhead equipment. A gas well is ~~be~~ considered completed when the well is capable of producing gas through wellhead equipment. A dry hole is ~~be~~ considered completed when all provisions of plugging have been performed, pursuant to the requirements of the Office of Oil and Gas. A multiple completion is the completion of more than one pool of hydrocarbon fluids into one (1) well bore.

2.8. "Cubic Foot of Gas" means the volume of gas contained in 1 cubic foot of space at a standard pressure base and a standard temperature base. The standard pressure base shall be fourteen and seventy-three hundredths (14.73) psia, and the standard temperature base shall be sixty (60) degrees Fahrenheit.

2.9. "Day" means a period of twenty-four (24) consecutive hours.

2.10. "Designated Agent" means a resident of the State of West Virginia, as required by the Office of Oil and Gas, upon whom process, notices, orders or other communications issued pursuant to this rule may be served.

2.11. "Field" means a geographic area which is underlain or appears to be underlain by at least one (1) pool; and "Field" shall include

the underground reservoir or reservoirs containing oil or gas or both. The words "Field" and "Pool" are synonymous when only one (1) underground reservoir is involved; however, "Field" may relate to two (2) or more pools.

2.12. "Gas Well" means any well which produces 6,000 cubic feet or more than 6,000 cubic feet of gas to each one (1) barrel of oil on initial gas-oil ratio test, defining oil and gas as in the statute.

2.13. "Hearing" means a proceeding in which any matter is heard before the Commission.

2.14. "Log or Well Log" means a systematic detailed geological record of formations encountered in the drilling of a well.

2.15. "Offset Operator" means any owner of any tract or parcel, with the right to develop, operate, and produce oil and gas from a pool and to appropriate the oil and gas produced there from, either for such person or for such person and others; located within one half of the distance to the next possible drill site, based on either special field rules or spacing as set forth in this Rule. In the event that there is no oil and gas lease in existence with respect to the tract in question, the owner of the oil and gas rights therein shall be considered an operator.

2.16. "Oil Well" means any well which produces less than 6,000 cubic feet of gas to each one barrel of oil on initial gas-oil ratio test, defining oil and gas as in the statute.

2.17. The words, "Person, Operator, Royalty Owner, Independent Producer, Oil, Gas, Pool, Well, Shallow Well, Deep Well, Drilling Unit, Waste, Correlative Rights, and Just and Equitable Share of Production", are defined by the statute and said definitions are hereby adopted in this rule.

2.18. "Purchaser" means any person who directly or indirectly purchases, transports, takes or otherwise removes oil, gas or other hydrocarbon to his account from a well, lease, drilling unit or pool.

2.19. "Special Field Rules" are rules ordered after a deep well has been drilled establishing a field or pool and an application is filed by the operator of the deep well or by the operator of any lands directly and immediately affected by the drilling of such deep well or wells in the field or pool. The special field rules will designate the field or pool by name, the area to which they are applicable, the acreage of each drilling unit, the shape thereof, the minimum distance from the outside boundary of each drilling unit at which a deep well may be drilled and a minimum distance between deep wells. The Commission may conform the size and shape of the drilling unit upon which a deep well is situated to the applicable special field rules.

2.20. "Statute" means WV Code §22C-9.

2.21. "Unit" means a mineral tract or two (2) or more mineral tracts which have been combined in such a manner that the combined tracts may be regarded as a common tract for the drilling and operation of a deep oil or gas well.

2.22. "Well Spacing" means the pattern or minimum distances from drilling unit boundary lines and from other deep wells drilling to or producible from the same pool, at which deep wells may be located.

§39-1-3. General Rules.

3.1. Duties of the Commission. -- The duties of the Commission shall be as described in the statute.

3.2. Access to records. -- The Commission and/or its authorized agent shall have access to such deep well and lease records, wherever located, as may be necessary in the performance of its statutory duties. All persons or operators, drilling or servicing deep wells, shall permit the Commission and/or its authorized agent, to come upon any lease, property or deep well operated or controlled by them, and to inspect the record and operation of such deep wells and to have access at reasonable time to such records of deep wells; Provided, That information so obtained shall be kept confidential.

3.3. Reports. -- All operators and

purchasers of oil and gas within the state shall, from time to time, file such reports containing such information and covering such periods as the Commission, in order to perform its statutory duties, may require by rule or regulation.

3.4. Tests and surveys. -- When deemed necessary or advisable in the performance of its statutory duties, the Commission, by rule or regulation, may require tests and surveys to determine the occurrence of waste of oil, gas, water or reservoir energy and the magnitude thereof.

3.5. Corrective action. -- The Commission shall require correction of any condition which is causing or is likely to cause waste of oil or gas and require the proper plugging and abandonment of any deep well or wells no longer used or useful.

3.6. Well designations. -- The operator, upon completion of any deep well, shall install and maintain, upon the deep well site, proper identification thereof, including, but not limited to, the operator's name, name of lease, number of the well, API number (composed of state, county and permit number).

3.7. Consent Agreements. -- When it appears that a violation of WV Code §22C-9-1 et seq., this rule, or any order or final decision of the commission, has occurred, the commission may issue an order or enter into a consent agreement to administratively dispose of the matter. If a consent agreement between the parties cannot be reached, the commission may elect to exercise its options provided in §22C-9-12.

~~3.7.3.8.~~ Naming of fields. -- All oil and gas fields subject to the statute discovered subsequent to the adoption of these rules and regulations shall be named by the Commission or at its direction.

~~3.8.3.9.~~ Forms upon request. -- Forms required by the Commission will be furnished upon request.

§39-1-4. Operational rules.

4.1. Notices -- General and emergency.

Any written notice of intention to do work which requires the Commission approval or to change plans previously approved by the Commission must be filed with the Commission, unless otherwise directed, and must receive Commission approval before the work is begun.

In case of emergency or a situation where operations might be unduly delayed, any written notice or approval required by rule to be given to or received from the Commission may be given or received orally or by wire or electronically, and, if approval is obtained, the transaction shall be confirmed in writing within ten (10) working days as a matter of record. The Chair of the Commission may also call an emergency hearing in cases where operations might be unduly delayed, by filing a prior notice with the Office of the Secretary of State pursuant to the Open Governmental Proceedings Act in W. Va. Code §6-9A-3. Included with any request for emergency hearing, the requesting party shall provide the Commission with the names, addresses and telephone numbers of all offset operators as defined herein. The Commission will make reasonable attempts to notify said offset operators.

4.2. Location of wells.

To prevent waste, in the absence of an application for special field rules or special field rules ordered by the Commission establishing drilling units or authorizing different deep well spacing or location patterns for a particular field or pool or parts thereof, each deep well drilled shall be not less than 3,000 feet from a permitted deep well location or from an existing well capable of producing hydrocarbons from the objective pool of the deep well and no deep well shall be less than 400 feet from a lease or unit boundary.

The Commission shall have the discretion to determine pattern location of deep wells adjacent to an area governed by special field rules where there is sufficient evidence to indicate that the pool or reservoir spaced by the special field rules may extend beyond the

boundary of the spacing order and the uniformity of the spacing pattern is necessary to ensure orderly development of the pool or field.

4.3. Exception to location of wells.

When exception to Rule 39-1-4.2 of this rule or a special field rule applicable to the location of deep wells is desired, the operator shall file a supplemental application to the application required by Rule 39-1-4.4.

The supplemental application shall be accompanied by a plat or sketch, with appropriate coordinates, drawn to the scale of 1 inch equaling to 2,000 feet accurately showing to scale all other completed, drilling or permitted deep oil and gas wells on said property or surrounding property within a distance of 2 miles if the plat or sketch submitted under subsection 4.4 of this rule does not accurately reflect the hereinabove information. The plat shall show:

4.3.a. The location at which a deep oil or gas well could be drilled in order to be in compliance with the applicable order, or rule;

4.3.b. The location at which the applicant requests permission to drill; and

4.3.c. The location at which deep oil or gas wells have been drilled or could be drilled in accordance with the applicable special field order or rule, directly or diagonally offsetting the proposed exception.

The Commission, after notice and hearing, may grant or deny the application and require the withholding or approve issuing of a permit pursuant to subsection 4.4 of this rule.

No exception shall prevent any operator from drilling a deep oil or gas well on adjacent lands, directly or diagonally offsetting the exception, at locations permitted by any applicable special field rules ordered by the Commission.

4.4. Application for permit.

All complete applications, as established by

the Office of Oil and Gas and field reviewed by Office of Oil and Gas inspectors, to be submitted to the Chief of the Office of Oil and Gas for a permit to drill, redrill, stimulate, operate, plug, abandon, deepen, case fracture, pressure, convert or combine any deep well, or physically change any deep well to allow the migration of fluid from one formation to another shall first be reviewed by the Commission or by an authorized agent to ascertain compliance with this rule. The Commission will provide the Chief of the Office of Oil and Gas with a statement either approving or disapproving the application based upon the ~~applicant's~~ compliance with Oil and Gas Conservation rules, ~~and the statutes, and orders.~~ The permit will be issued by the Chief of the Office of Oil and Gas when the applicant has complied with this rule. The application shall contain, or show by plat or sketch, in addition to the requirements of this rule, the following:

4.4.a. For all wells permitted pursuant to W. Va. Code §22C-9-7(b), a certificate of consent and easement from all owners of the surface of the tract on which the deep well is to be drilled;

4.4.b. A tabulation of all deep wells within 1 mile of the proposed location, including the API number of the deep well, well name and the name and address of the operator;

4.4.c. Shown on a plat for a proposed deep well location in an area covered by special field rules, the boundaries of the drilling unit, the distances from the proposed deep well location to the nearest outside boundary and the acreage of each tract within the drilling unit. Such plat shall accompany the application and shall be drawn to a scale of 1 inch to 2,000 feet. The plat shall be prepared by a licensed land surveyor or registered engineer showing the district and county in which the tract of land upon which the well to be drilled is located, the acreage of the tract, the name of mineral owners or lessees of adjacent tracts, the proposed or actual location of the well determined by survey, the courses and distances of such locations from two (2) permanent points or landmarks on said tracts and the number to be given the deep well. The plat will show all deep oil and gas including

abandoned deep oil and gas wells within 1 mile of the proposed or actual deep well for which a permit is being sought and the distances to each;

4.4.d. Any other information which the Commission, by order, rule or policy, may require to perform its statutory duties.

4.4.e. In addition, the operator shall schedule with the Commission staff, a reclamation plan review prior to filing a deep well permit application. And shall prepare a well site safety plan and conduct a pre-spud meeting prior to beginning drilling operations on any deep well; and

4.5. Annual report of oil and gas production.

For each deep oil or gas well, an annual report of production by month shall be filed with the Commission. The report will be filed on or before the succeeding March 31st. The report will be filed regardless of the status of the deep well.

The report to be submitted by the operator or a person specified by the operator shall include the operator's name, place of business, lease or well name, API number (composed of state, county and permit number), days produced during the report month, volume of oil measured in barrels or gas measured in thousand cubic feet, and other pertinent information as the Commission, by rule, may require in the performance of its statutory duties.

4.6. Filing of well logs.

Within ninety (90) days after the completion of drilling or recompletion of a deep well, the operator shall submit to the Commission copy of the well log and the electrical, radioactive or other similar conventional log if they have been run. In addition, as soon as practicable, and upon the request of the Commission, operators shall file a copy of drill stem test charts, formation water analysis, porosity, permeability or fluid saturation measurements, core analysis and lithologic log or sample description as compiled: Provided, That no such information shall be required unless the operator has

compiled such information in the ordinary course of business. No interpretation of the data is to be filed.

All information furnished to the Commission hereunder with respect to a deep well marked "confidential" shall be kept confidential for one (1) year after the date the information is required to be filed hereunder, unless the owner gives written permission to release such information at an earlier date. For good cause shown by the operator the Commission may extend the period of confidentiality for a one (1) year period. The total period of confidentiality shall not exceed three (3) years.

4.7. Measurement of oil.

The volume of production of oil shall be computed in terms of barrels of clean oil on the basis of meter measurement or tank measurements of oil level difference, made and recorded to the nearest 1/4 inch of one hundred percent (100%) capacity tables, subject to the following corrections:

4.7.a. Correction for impurities. -- The percentage of impurities (water, sand and other foreign substances, not constituting a natural component of the oil) shall be determined to the satisfaction of the Commission and the observed gross volume of oil shall be corrected to exclude the entire volume of such impurities; and

4.7.b. Temperature correction. -- The observed volume of oil corrected for impurities shall be further corrected to the standard volume at sixty (60) degrees Fahrenheit in accordance with A.S.T.M.D. - 1250, Table 7, or any revisions thereof and any supplements thereto or any close approximation thereof approved by the Commission.

4.8. Measurement of Gas. -- All gas except gas used on the lease for development purposes and lease operations or free gas, when produced or sold shall be measured by an approved meter of sufficient capacity. The standard pressure base for reporting purposes shall be 14.73 psia regardless of atmospheric pressure at the point of measurement and the standard temperature

base shall be sixty (60) degrees Fahrenheit.

4.9. Multiple pool completion or commingling in one (1) well bore.

In the absence of special field rules, an operator will, within seventy-two (72) hours after commencing to complete a deep well in more than 1 pool, file written notice to the Commission of the intended multiple completion. Within fourteen (14) days after the multiple completion and before any production for the deep well is marketed, the operator shall file a report stating whether the production is segregated or commingled, include a diagrammatic sketch of the mechanical installation, name and address of the operators and a plat showing the location of the deep well and deep wells within (1) one mile of the deep multiple completion well which have been or may be capable of being completed in the same pool or pools.

The operator will provide, by certified mail, a copy of the report to all offset operators. The operator shall provide the Commission with the certified mail receipts. If, within fifteen (15) days no protest is received and the Commission determines no waste will result from the completion, the completion will be approved without notice and hearing.

In the event the pools are segregated, the Commission may require tests as it deems necessary to determine the effectiveness of the segregation of the different producing pools.

4.10. Intentional and unintentional deviation in drilling.

Before beginning intentional directional drilling, other than sidetracking due to hole conditions, when the intent is to direct the bottom of the hole away from the vertical, notice of intention to do so shall be filed with the permit application and approval obtained. Such notice shall state clearly name and address of operator, the deep well's API number, lease name, field or pool, county, the depth, exact surface location of the well bore, proposed direction of deviation and proposed horizontal distance between the bottom of the hole and

surface location, reason for intentional deviation and a list of offset operators. Except as provided for in §39-1-4.1, the Commission shall notify offset operators of the applicant's plan and hold the notice ten (10) days. If objection is received, the application will be set for public hearing. If no objection is received, the application shall be approved. If approval is obtained, the operator shall file, with the Commission within sixty (60) days after the completion of the work, an accurate and complete copy of the directional survey.

In all deep wells, all operators shall, when the safety of the well bore is not in jeopardy, survey their well bore for unintentional deviation from the vertical at least every 500 feet or every bit change if less than 500 feet, but no more frequently than 250 feet. The operator shall calculate the cumulative random drift of the bore hole from such survey as drilling progresses. The operator shall file a copy of such record within sixty (60) days after completion of the drilling operation and before sale of hydrocarbons is made from the well.

In the event safety precludes a survey being performed as described above, the operator shall, at the Commission's request, before completion of drilling operations and before sale of hydrocarbons is made from the well, run cased hole deviation surveys or directional surveys on the well bore.

In all deep wells, should the operator calculate or have reason to suspect the cumulative random drift exceeds the surface distance of the well from the nearest drilling unit or lease boundary, the operator shall run a directional survey on the bore hole to determine where the bore hole actually lies and file a copy of such record within sixty (60) days after completing the survey and before the sale of any hydrocarbons is made.

4.11. Production potential, shut-in pressure and gas-oil ratio testing and reports. -- Production potential, shut-in pressure and gas-oil ratio testing and reporting may be required by the Commission to perform its statutory responsibilities. In deep well gas testing, the methods prescribed in the Interstate Oil

Compact Commission's "Manual of Gas Well Testing" shall be used.

4.12. Gas-oil ratio test. -- Each operator shall take a gas-oil ratio test not later than thirty (30) days following the completion or recompletion of any deep well producing from a pool which contains both oil and gas. The results of such test shall be reported to the Commission within fifteen (15) days after the completion of the test. Upon request, the Commission may waive or extend the time for making a gas-oil ratio test. Additional tests may be taken at any time and shall be taken as required by the Commission to perform its statutory responsibilities.

§39-1-5. Secondary Recovery Rules.

5.1. Waterflooding and other recovery operation.

Applications for secondary or additional recovery operations, whether by waterflooding or repressuring or pressure maintenance operations, for a pool productive of oil shall contain:

5.1.a. A plat drawn to a scale of 1 inch equal to 2,000 feet showing the area involved, together with the well or wells, including shallow wells and dry and abandoned wells located thereon, all of which shall be properly designated;

5.1.b. The name, description and depth of the formations to be affected;

5.1.c. The log of any injection well or such similar information as is available;

5.1.d. A description of any injection well's casing or the proposed casing program and the proposed method for testing casing before use in any injection well;

5.1.e. A statement as to the type of fluid to be used for injection, its source and the estimated amounts to be injected daily;

5.1.f. A full description of the particular operation for which approval is requested,

including the additional oil recovery anticipated and the economic feasibility of the project;

5.1.g. A copy of the unit agreement showing the approval of the plan and its terms of operation by the operators of approximately three fourths (3/4) of the acreage (calculating partial interests on a pro rata basis for operator interests on any parcel owned in common) and the royalty owners of approximately three fourths (3/4) of the acreage (calculating partial interests on a pro rata basis for royalty interests on any parcel owned in common); and

5.1.h. A statement of the designated operator for the unit.

5.2. Unit operations. -- Subsequent to notice and hearing, at which the applicant will provide a copy of the unit agreement showing the approval of the plan and its terms of operation by the operators of at least three fourths (3/4) of the acreage (calculating partial interests on a pro rata basis for operator interests on any parcel owned in common) and the royalty owners of at least three fourths (3/4) of the acreage (calculating partial interests on a pro rata basis for royalty interests on any parcel owned in common), the Commission may enter an order as provided in W. Va. Code §22C-9-8.

5.3. Monthly report. -- A monthly report of fluids injected and withdrawn shall be filed in a form prescribed by the Commission.

5.4. Notice of commencement and discontinuance of injection operations. -- The Commission shall be notified in writing within three (3) days of the commencement of injection operations and within ten (10) days of injection operations. No injection well shall be plugged without a permit.

§39-1-6. Special Field Rules.

6.1. Any operator intending to apply for special field rules, shall, along with the application which shall show applicant's name and address and describe the area for which a spacing order is requested, send a notice of a prehearing conference to the Commission and the operators of any lands directly or

immediately affected by the proposal. The prehearing notice shall include a list of the names and addresses of all operators to whom it was sent, a statement that a diligent effort has been made to determine to whom the notice must be sent, a statement that opponents to the application must file written notice with the Commission within ten (10) days or the conference will not be held, and the evidence required in Section 6.2. The Commission shall set a day, time and place for the prehearing conference to be not less than twenty (20) days following the date of the prehearing notice. If no written opposition to the application is received by the Commission within the ten (10) days after the date of the prehearing notice, the Commission will advise all persons to whom the prehearing notice was sent that a conference will not be held. If any operator relates in writing to the Commission opposition to the applicant's proposal, within ten (10) days, a conference will be held. Any operator may attend and participate in the conference even though he did not request it. Opponents to the application shall present evidence, as required of an applicant in this section, indicating where there is disagreement with the applicant, sufficient to permit all operators to attempt to resolve the difference.

6.1.a. The Commission shall assign the application a cause number and enter the proceeding along with its date of filing on a separate page of the docket. Notice of the docket and the time and place of the hearing shall be in accordance with the provisions of the statute. Hearing shall be not less than twenty (20) days and not more than forty-five (45) days after receipt of the application except under emergency hearing rules as defined herein.

6.1.b. Any person desiring to protest the granting of the application, shall, at least five (5) days prior to the date of the hearing, file a statement of opposition and a counter plan with the Commission and all operators of lands directly and immediately affected and state briefly the issues.

6.2. The Commission, in all proceedings relating to the determination of special field rules for the conservation of oil and gas in the

State of West Virginia, shall, in addition to the provisions of W. Va. Code §22C-9-10, require evidence from an applicant as follows:

6.2.a. A topographic map at a scale of 1 inch equal to 2,000 feet with an outline of the area for which special field rules are requested;

6.2.b. Known lease ownership of the area for which special field rules are requested by plat at a scale of 1 inch equal to 2,000 feet and/or a tabulation of such ownership;

6.2.c. Geological mapping, records and testimony relevant to the area to be spaced;

6.2.d. Reservoir data anticipated for an average proposed drilling unit within the spaced area; and

6.2.e. A comparative economic evaluation of spacing patterns, based on estimated production and rate of production of oil and/or gas of the average proposed drilling unit within the spaced area.

6.3. The applicant will open the hearing and present the testimony and exhibits offered in support of the application. The applicant's witnesses will be subject to cross-examination by the Commission or any interested parties. The Commission shall determine the order of the appearances of the other participants in the hearing. Each interested party affected by the application who has complied with the requirements of this section, may present testimony and exhibits in support of or in opposition to the applicant's proposals. The applicant or interested parties may request to enter as evidence information of a proprietary nature. Proprietary information is defined as information that is not readily available in the public domain. If objections arise concerning the proprietary nature of evidence, the Commission may hear arguments with regard to the validity of the request and rule prior to the submission of evidence. If the evidence is found to be of a proprietary nature the Commission will issue a protective order restricting the use of that evidence to the hearing and in deliberations of the Commission. A copy of all proprietary evidence shall be sealed and held by the

Commission. All other copies utilized in the hearing shall be returned to the submitting parties. All witnesses shall be subject to cross-examination as previously set forth.

6.3.a. The applicant may offer rebuttal testimony and exhibits, but the witnesses will again be subject to cross-examination. Surrebuttal testimony and exhibits and subsequent testimony and exhibits may be permitted at the discretion of the Commission.

6.3.b. Closing statements and statements of position may be made by the participants and all other interested persons before the hearing is closed or at such time as designated by the Commission. No order shall be made which is not supported by competent legal evidence.

6.3.c. The Commission shall enter a spacing order or dismiss the application therefore within forty-five (45) days after the application for a spacing order has been filed.

6.4. In the absence of special field rules and in order to protect correlative rights, an operator may apply to the Commission for the pooling of interests and the formation of a drilling unit. A drilling unit may be established prior to or after completion of a deep well. The interests shall be pooled according to W. Va. Code §22C-9-7(b). The applicant shall adhere to the notice and prehearing conference provisions as provided for in subsection 6.1 of this rule. With regard to reservoir characteristics and well spacing, the applicant shall meet evidence requirements set out in W. Va. Code §22C-9-7(a). After notice and hearing the Commission may enter an order pooling the interests of the effected parties. If, subsequent to an order being entered pooling the interests of the effected parties, additional information is obtained warranting a different drainage area, the pooling order may be revised at the request of an interested party. The pooling order may be revised only after notice and hearing as set forth above.

6.5. Upon receipt by the commission of a request for pooling or special field rules the commission may issue an order requiring the operator of a well or wells in question to

establish an interest bearing escrow account for the deposit of proceeds attributable to conflicting working interests and/or royalty interests where a conflict exists as to ownership or where ownership cannot be determined. The pooling order shall require the operator to submit a monthly report to the commission detailing the funds deposited in the escrow account. The order shall require the operator to obtain approval from the commission for the release or disbursement of funds from the escrow account. The order is subject to the appeal provisions of §22C-9-11. After the time frame for an appeal has expired, the operator shall seek approval from the commission to release those funds required to be disbursed.